JUSTICE OF THE PEACE AND LOCAL GOVERNMENT REVIEW REPORTS

1955. 119 J.P.

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A

ACCOMMODATION AGENCY

Deposit paid before list of addresses supplied; undertaking to return deposit if client not accommodated; Accommodation Agencies Act, 1953, s. 1 (1) (*b*).—By the Accommodation Agencies Act, 1953: "Subject to the provisions of this section, any person who, during the continuance in force of this Act ... (*b*) demands or accepts payment of any sum of money in consideration of supplying, or undertaking to supply, to any person addresses or other particulars of houses to let" shall be guilty of an offence. The appellant carried on a business of an estate agent which substantially consisted in the finding of furnished accommodation. On a person making an inquiry for accommodation, he would be asked his requirements and what rent he was willing to pay. He would then be told that the fee payable by him, if accommodated, was a sum equal to one week's rent of the premises taken by him, and that a deposit of approximately half the weekly rental would be asked for. In the event of the client being willing to pay the deposit, an agreement would be signed. Sometimes before, and sometimes after, the signing of the agreement, the client would be given a list of addresses. After a client had found accommodation, he would pay the balance of the fee due. Unsatisfied clients who asked for return of their deposits received them back in full. The appellant, who was found to be carrying on an honest business, was convicted under s. 1 (1) (*b*) of the Act in respect of sums received from two clients by way of deposit in the aforementioned circumstances:—*Held*, that the deposits were paid in consideration of the addresses being supplied, that the fact that the appellant undertook to return the deposits if the client was not satisfied was immaterial, and that, therefore, the convictions were right. (McInnes *v.* Clarke. Q.B.D.) 208

ADOPTION

1. Amendment of order; correction of particulars; jurisdiction of magistrates; Adoption Act, 1950, s. 21 (1).—In 1946 the adopter became acquainted with a child who was then in the care and custody of the London County Council. In 1949 the child was boarded out with the adopter and since then had lived in her home. On June 20, 1951, a juvenile court made an adoption order authorizing her to adopt the child. In the order the child was described as a foundling, and it was stated that the court was satisfied that it was identical with a child registered in the register of births on July 16, 1942, and that the probable date of birth was August 1, 1938. The adopter, believing that these particulars were incorrect, applied under s. 21 (1) of the Adoption Act, 1950, to have them corrected, but the justices refused to hear the application on the ground that they had no jurisdiction to do so. On an application for *mandamus*:—*Held*, that, the words of the subsection being in the widest possible terms, the

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power given to the court thereby was not in the nature of a slip rule, but gave the justices jurisdiction to correct an error if they came to the conclusion that one had been made, and that *mandamus* must, accordingly, issue. (R. *v.* Chelsea Juvenile Court Justices. *Re* An Infant. Q.B.D.) 59

2. Consent to order; "parent"; natural father of illegitimate child; Adoption Act, 1950, s. 2 (4) (*a*).—By the Adoption Act, 1950, s. 2 (4) (*a*), an order for the adoption of an infant shall not be made "except with the consent of every person . . . who is a parent . . . of the infant . . ." The natural father of an illegitimate child is not a "parent" within s. 2 (4) (*a*), and, therefore, if he is not liable by virtue of any order or agreement to contribute to the maintenance of the infant within para. (*a*), his consent to the making of an order authorizing the adoption of the child is not necessary. (*Re* M. (An Infant). C.A.) 535

3. Dispensing with consent to order; abandonment of infant; consent unreasonably withheld; Adoption Act, 1950, s. 3 (1) (*a*), (*c*).—In October, 1952, an illegitimate child, who was born in July, 1951, was given by her mother (the respondent), into the care of the appellants, a husband and wife, who were friends of the mother. The appellants were then living at Ellesmere, and they started proceedings to obtain an adoption order from the local justices. On November 24, 1952, the respondent signed the necessary form of consent to the adoption. At that time she knew what the consequences of signing the form would be and thought that it was a final step which would completely dispossess her of the child; she did not know that she had the right to change her mind before the adoption order was actually made. Before the date fixed for the hearing of the application, the applicants moved to Bury. They were advised that the application should be made before justices there, and also that it should not be made until they had a home of their own, and, in consequence, they did not apply till June, 1954. Meanwhile, the child remained all the time with them, entirely supported by them and brought up as their own, and was never visited by the respondent. Before the hearing of the application by the justices at Bury in October, 1954, the respondent withdrew her consent, and at the hearing objected to the order being made, saying that she wished to keep the child. The appellants contended, *inter alia*, that the respondent had abandoned the child, and that, therefore, under s. 3 (1) (*a*) of the Adoption Act, 1950, her consent was not necessary. The justices found that the respondent had affection for the child and genuinely desired that it should not be adopted. They were of opinion that she had not abandoned it within the meaning of s. 3 (1) (*a*) of the Act, and that her consent had not been unreasonably withheld within the meaning of s. 3 (1) (*c*). Accordingly, they dismissed the application. On appeal:—*Held*, (i) that only an abandonment which was of such a kind as would render a parent liable under the criminal law would constitute an abandonment of a child by its parent within the meaning of s. 3 (1) (*a*) of the Act of 1950, and that, as the respondent had not left the child to its fate, but had given it to persons in whom she had confidence, she had not abandoned the child within the meaning of s. 3 (1) (*a*); (ii) that it was open to the justices on the facts, to find that the respondent had not unreasonably withheld her consent, and so they had not erred in law in coming to that decision, and the appeal must be dismissed. (Watson and Another *v.* Nikolaisen. Q.B.D.) ... 419

ARMORIAL BEARINGS PAGE

The use by a trading company of the arms of a municipal corporation as their common seal is illegal and will be inhibited by the Court of Chivalry. Where, however, the company displayed the arms of the corporation in the auditorium of a theatre owned by them, it was *held* that that would not be a ground for intervention by the court, since for many years past in modern times armorial bearings had been widely used as a decoration or embellishment for many articles without complaint. (Manchester Corporation *v.* Manchester Palace of Varieties, Ltd. Court of Chivalry) 191

B

BETTING AND LOTTERIES

1. Betting house; assisting in conduct of business; receipt of money and betting slips in street by agent of keeper of house; delivery of money and slips at house; charge laid under wrong section; Betting Act, 1853, s. 3, s. 4.—The defendant received money and betting slips in the street as agent for the keeper of a betting house. He delivered the money and slips at the house, but he never took part in the work done inside the house. He was charged with assisting in conducting the business of the betting house, contrary to s. 3 of the Betting Act, 1853, and the magistrate dismissed the information:—*Held*, that the decision of the magistrate was right, as the offence, if any, committed by the defendant was under s. 4 and not under s. 3 of the Act. *Dicta* of LORD MAUGHAM, L.C., in Milne *v.* Commissioner of Police for City of London (1939) (103 J.P. 299) applied. (Baxter *v.* Keldon. Q.B.D.) 163

2. Private lottery; "society . . . conducted for purposes not connected with lotteries"; supporters' club providing funds for football club by lottery; Betting and Lotteries Act, 1934, s. 24 (1).—The Torquay Supporters' Club, according to its rules, was formed with the object of promoting the welfare of the Torquay football club and of obtaining funds for that purpose and using them in such manner as its executive committee might direct. Membership, which exceeded 7,000, was open to all persons, the annual subscription being 1*s.* The activities of the Supporters' Club included social functions, all primarily aimed at raising money; providing gatemen, stewards, and other voluntary services on the ground of the football club; improving the amenities of the ground; organizing arrangements for running the football club and transport for supporters; and maintaining and repairing playing kit. In March, 1954, the executive committee of the Supporters' Club appointed a sub-committee to organize a weekly lottery. The sale of tickets was confined to members of the Supporters' Club and the lottery was conducted so as to comply, so far as possible, with the requirements of private lotteries laid down in s. 24 of the Betting and Lotteries Act, 1934. After deducting the cost of printing and stationery, 60 *per cent.* of the proceeds of the lottery was devoted to the provision of prizes, and 40 *per cent.*, averaging about £90 per week, was given as a contribution to the football club. The defendants, who were members of the Supporters' Club and assisted in the organization of the lottery, were convicted at a magistrates' court of conducting an illegal lottery, contrary to s. 22 (1) of the Act of 1934, but the convictions were quashed on appeal by them to quarter sessions. On appeal by the prosecutor to the Divisional Court:—*Held* (DEVLIN, J., dissenting), that the Supporters' Club was a society conducted for purposes connected with the lotteries; that, therefore,

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the lottery was not a private lottery within s. 24 (1) of the Act and was unlawful under s. 21; and that the convictions must be restored. (Maynard *v.* Williams and Others. Q.B.D.) 137

3. Track with totalisator; exclusion of bookmaker; three rings; permission to enter two rings; space to be available for bookmaker conveniently to carry on bookmaking; extent of obligation on occupiers of track; Betting and Lotteries Act, 1934, s. 11 (2) (*a*) (*b*).—By s. 11 (2) of the Betting and Lotteries Act, 1934, "The occupier of a licensed track—(*a*) shall not, so long as a totalisator is being lawfully operated on the track, exclude any person from the track by reason only that he proposes to carry on bookmaking on the track; and (*b*) shall take such steps as are necessary to secure that, so long as a totalisator is being lawfully operated on the track, there is available for bookmakers space on the track where they can conveniently carry on bookmaking in connexion with dog races run on the track on that day; and every person who contravenes, or fails to comply with, any of the provisions of this section shall be guilty of an offence." At a licensed track where a totalisator was in operation there were three enclosures known as the Big Ring, the Middle Ring and the Small Ring. The appellants, the occupiers of the track, had informed a bookmaker that they were prepared to admit him to the Small Ring and had never refused him admission to the Middle Ring, but they refused an application by him to be allowed to make a book in the Big Ring. On a private prosecution by the bookmaker the appellants were convicted as contravening s. 11 (2) (*a*) and s. 11 (2) (*b*):—*Held*, (i) that the first conviction must be quashed as the bookmaker had not been excluded from the "track" within the meaning of s. 11 (2) (*a*); and (ii) that the second conviction also must be quashed, as, by making space available where bookmakers could carry on bookmaking, namely, the three rings, the appellants had discharged their duty under s. 11 (2) (*b*), and they were not under the further obligation, under the head of convenience, to permit any particular bookmaker to make his book in any particular place in the track if the room was available. (R. *v.* Greyhound Racing Association, Ltd. C.C.A.) 501

C

CHILDREN AND YOUNG PERSONS

Receipt by local authority into their care; transfer to residential school; right of mother to family allowance; Family Allowances Act, 1945, s. 3 (2), s. 21 (7).—By the Family Allowances Act, 1945, s. 3 (2), as amended by the Family Allowances, &c., Act, 1952, s. 6 and sch. V: "It shall be a condition of a child's being treated as included in a family . . . that the child is living with [his parents or one of them] . . . or, if not, that the cost of providing for the child is contributed to by them . . . at the rate of 8*s.* a week or more." By s. 21 (7): "A child shall not be deemed for the purposes of this Act to have ceased to live with a person by reason of any temporary absence, and in particular by reason of absence at any school . . ." In December, 1952, a local authority provided a mother and her three children with residential accommodation under part III of the National Assistance Act, 1948, the mother having been deserted by her husband. In April, 1953, the two elder children were received into the care of the local authority under the Children Act, 1948, s. 1 (1), and were

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transferred to residential schools. While the children were at school, the mother contributed less than 8*s.* a week in cash or in kind towards the cost of providing for either of them, but she claimed that she was entitled to include those children in her family for the purposes of family allowance under the Act of 1945:—*Held*, the children's absence was due, not to the fact that they were at school, but to the fact that the local authority had undertaken their care and maintenance in exercise of their powers under the Children Act, 1948, s. 1, and, therefore, the children were not living with their mother in any sense whatever, and she was not entitled to claim family allowance in respect of them. (Hill *v.* Minister of Pensions and National Insurance. Q.B.D.) 506

COMPANIES

Cemetery; company; winding-up; disclaimer of onerous property by liquidator; freehold land constituting cemetery; implied contracts with holders of grave certificates; contracts for upkeep of graves; Companies Act, 1948, s. 323 (1).—A company was incorporated on May 19, 1836, by special Act for the purpose of establishing and maintaining a cemetery in Nottingham. It was empowered to grant, and had granted, grave certificates for the exclusive right of burial in vaults and other burial places in the cemetery. The undertaking was successfully carried on for many years, but the Nottingham Corporation Act, 1923, imposed certain restrictions on burials in the cemetery which resulted in the company sustaining losses, and on May 11, 1953, an order was made for the compulsory winding-up of the company as an unregistered company under s. 399 of the Companies Act, 1948. The funds in the hands of the liquidator were only sufficient to maintain the cemetery for two and a half years and it was thus clear that the undertaking must soon terminate. Pursuant to s. 323 (1) of the Act the liquidator applied for liberty to disclaim the freehold land which constituted the cemetery, all implied contracts with the holders of grave certificates, and all contracts for the upkeep of graves:—*Held*, the freehold land which constituted the cemetery was land burdened with onerous covenants within s. 323 (1) of the Act, and an order giving the liquidator liberty to disclaim would be made. (*Re* Nottingham General Cemetery Co. Ch.D.) 443

COMPULSORY PURCHASE

1. Costs; purchase of registered land; liability of purchasing authority; Lands Clauses Consolidation Act, 1845, s. 82; Solicitors' Remuneration (Registered Land) Order, 1925 (S.R. & O. 1926, No. 2), art. I (D), schedule, as amended by the Solicitors' Remuneration (Registered Land) Order, 1953 (S.I. 1953, No. 118).—Under a compulsory purchase order made under the Town and Country Planning Acts, 1944 and 1947, the council purchased freehold land registered under the Land Registration Act, 1925, with an absolute title. After completion, the vendors received from their solicitors a lump sum bill charging the scale fee appropriate to a completed transfer on sale of registered land under the Solicitors' Remuneration (Registered Land) Orders, 1925 to 1953. The vendors applied to the council for payment of this bill, pursuant to the Land Clauses Consolidation Act, 1845, s. 82. The council objected to the bill, which thereupon became taxable under s. 83 of the Act of 1845, and on a petition preferred by the vendors the bill was allowed as

COMPULSORY PURCHASE—*continued* PAGE

drawn. The council then entered objections to the bill which were overruled by the taxing master. On a summons to review the taxation:—*Held*, remuneration for conveyancing transactions in connexion with registered land was within the words " the remuneration of solicitors in conveyancing and other non-contentious business under the Land Registration Act, 1925 ", in art. I of the Solicitors' Remuneration (Registered Land) Order, 1925, and as that order, as amended, contained no provision excepting compulsory purchases, the scale fee was rightly allowed in accordance with para. (D) of art. I, of the order of 1925, as amended, and the summons or review of taxation should be dismissed. (*Re* West Ferry Road, Poplar. Ch.D.) 343

2. Costs; purchase of registered land; liability of purchasing authority; Lands Clauses Consolidation Act, 1845, s. 82; Solicitors' Remuneration (Registered Land) Order, 1925 (S.R. & O. 1926, No. 2), art. I (D), schedule, as amended by the Solicitors' Remuneration (Registered Land) Order, 1953 (S.I. 1953, No. 118).—The London County Council bought, under a compulsory purchase order made under the Town and Country Planning Acts, 1944 and 1947, freehold land registered under the Land Registration Act, 1925, with absolute title. The transaction having been completed, the vendors' solicitors submitted to the vendors a lump sum bill for the work done in connexion with the conveyance of the land to the council, charging the scale fee appropriate to a completed transfer on sale of registered land under the Solicitors' Remuneration (Registered Land) Orders, 1925 to 1953. Failing agreement between the parties the bill was taxed under s. 83 of the Lands Clauses Consolidation Act, 1845, and allowed:—*Held*, the bill was for a completed transfer on sale of registered land within art. I (D) of the order of 1925 notwithstanding that para. (H) of the order included work for which the promoter might not be liable under s. 82 of the Lands Clauses Consolidation Act, 1845, and, therefore, the scale fee under the Solicitors' Remuneration (Registered Land) Orders, 1925 to 1953, was rightly allowed. Decision of HARMAN, J. (*ante*, p. 343) affirmed. (*Re* West Ferry Road, Poplar, London. *Re* Padwick's Estate. C.A.) 467

CRIMINAL LAW

1. Accessory before the fact; summing-up; sufficiency of knowledge of general unlawful purpose.—The appellant was convicted on two counts of an indictment of being accessory before the fact to housebreaking and larceny. A different motor car was used in connexion with each of the two offences, and in each case the appellant was proved to have hired the car found on the scene of the crime. The appellant admitted that he had hired the cars, but he said that their use in connexion with the crimes was unknown to him. The case was conducted, and the summing-up proceeded, on the basis that the appellant was personally concerned with the breaking and entering, and that his defence was an alibi. After having retired, the jury returned into court, and the foreman asked the judge for a direction on what the position would be in law if the jury were satisfied that, though the appellant might not have been the driver of either of the cars, he knew beforehand that they were going to be used by a thief or thieves. The judge replied: " Then he would be an accessory before the fact and would be liable to be punished accordingly ":—*Held*, that the sufficiency of the direction must be considered against the

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background of the facts, and that in the circumstances it was sufficient, an elaborate direction on the distinction between a general unlawful purpose and a particular unlawful purpose not being necessary. R. *v.* Lomas (1913) (73 J.P. 152) explained. *Per curiam:* The second part of the headnote to R. *v.* Lomas in the *Criminal Appeal Reports* that " there must be some particular crime in view " is not supported by the judgment of the court. (R. *v.* Bullock. C.C.A.) 65

2. Appeal; sentence of imprisonment; death of prisoner before application for leave to appeal heard; widow not allowed to continue proceedings.—A prisoner, who had been sentenced to a term of imprisonment, gave notice of application for leave to appeal against conviction, but died in prison before the application could be heard. His widow applied for leave to continue the proceedings:—*Held*, that the application must be refused, as in the case of a sentence of imprisonment neither a widow nor executors or administrators of the prisoner have any legal interest in the proceedings. *Per curiam:* in the case of sentence of a fine, executors or administrators may be allowed to appeal or continue an appeal against conviction, as, in the event of the appeal succeeding, they would be able to save or recover the fine for the benefit of the deceased's estate. (R. *v.* Rowe. C.C.A.) 349

3. Assault with intent to prevent arrest; power to convict of common assault; Offences against the Person Act, 1861, s. 38.—On an indictment charging assault with intent to prevent lawful apprehension, contrary to s. 38 of the Offences against the Person Act, 1861, it is open to the jury to convict of common assault, since the last-named offence is a lesser offence of the same quality as that charged, namely, an assault without the circumstances of aggravation involved in the major offence. (R. *v.* Wilson. C.C.A.) 216

4. Automatism; defence to criminal charge; act done unconsciously.—A father struck his son, aged 10 years, on the head with a mallet and threw him out of a window, causing him grievous bodily harm. There was no evidence of provocation or motive. The father stated that he did not know why he hit the boy, but that he remembered hitting him, and that the next thing he remembered was being in his car. There was a history of ill health in the father's family and, according to medical evidence, he possibly had a cerebral tumour, which rendered him liable to outbursts of impulsive violence over which he had no control. The father was charged (i) with causing grievous bodily harm to the boy with intent to murder him, (ii) with causing him grievous bodily harm with intent to cause such harm, and (iii) with unlawfully and maliciously causing him grievous bodily harm, but without any allegation of specific intent. The accused contended that his act was not his conscious act or one over which he had control. THE LEARNED JUDGE directed the jury that they must consider whether on the evidence the accused man had the intents alleged in the first two counts, and, on the third count, whether the grievous bodily harm was caused by his conscious act or whether he had acted as an automaton without any control over or knowledge of his actions, as it would be in the case of a person in an epileptic fit. (R. *v.* Charlson. Chester Asz.) 283

5. Brothel; premises divided into two flats; separate lettings; common front door; use of kitchen shared; each flat used by one woman for

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prostitution; Criminal Law Amendment Act, 1885, s. 13 (3).—The first and second floor of certain premises were let by the respondent, as agent of the lessor, to a woman whom she knew to be a prostitute, and the third floor was also let by her in the same capacity to another woman whom she knew to be a prostitute. Access to the three floors was obtained by the same street door, and there was a common staircase on which a substantial door fitted with a lock divided the whole of the third floor from the lower floors, making it self-contained. A kitchen on the second floor was used by both tenants. The respondent was charged with letting the premises with the knowledge that they were to be used as a brothel, contrary to s. 13 (3) of the Criminal Law Amendment Act, 1885. The magistrate found that there were separate lettings of the two flats and no common user beyond that of the kitchen. He dismissed the information:—*Held*, that, as premises could not constitute a brothel if they were used by one woman only, and as there was evidence to justify the magistrate's finding with regard to separate lettings, the Divisional Court would not interfere with his decision. (Strath *v.* Foxon. Q.B.D.) ... 581

6. Conversion by trustee; protection from prosecution; act first disclosed on oath, in consequence of compulsory process of court; conversion by executor of assets comprised in estate; disclosure in affidavit made by executor in administration proceedings; Larceny Act, 1916, s. 43 (2).—The defendant was the executor and trustee of his mother's will. On an originating summons taken out by a beneficiary an order was made for the administration of the estate by the court, and the defendant was required to lodge certain accounts and a statement, all of which were to be verified by affidavit. He swore an affidavit in which he disclosed that he had converted to his own use most of the assets from his mother's estate. The defendant being prosecuted for fraudulent conversion as a trustee, under the Larceny Act, 1916, s. 21, the defence moved to quash the indictment on the ground that, under s. 43 (2) of the Act the defendant was not liable to be convicted:—*Held*, (i) a motion to quash an indictment on the ground that the defendant was protected by s. 43 (2), should be made before plea; (ii) the conversion constituting the offence charged had been first disclosed on oath by the defendant " in consequence of . . . compulsory process of [a] court of law or equity in [a] . . . proceeding " within s. 43 (2), and so he was protected by the subsection from being convicted and the indictment should be quashed. (R. *v.* Maywhort. Chester Asz.) 473

7. Evidence; admissibility; relevant to matters in issue; whether court concerned with method of obtaining evidence.—The appellant, a native of hitherto good character, while on his way to visit his reserve in Kenya, was stopped at a road block and searched by two police officers, both of whom were under the rank of assistant inspector. As a result of the search they claimed to have found in the appellant's possession two rounds of ammunition and a pocket knife. The appellant denied that he was carrying these articles. He was convicted of being in unlawful possession of two rounds of ammunition, contrary to the Emergency Regulations, 1952, reg. 8A (1) (*b*), of the colony and protectorate of Kenya, and was sentenced to death. By reg. 29 of the regulations only police officers of or above the rank of assistant inspector had power to stop and search individuals:—*Held*, the test in considering whether evidence was admissible was whether

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it was relevant to the matters in issue, and, if it was relevant, the Court was not concerned with the method by which it was obtained, nor with the question whether that method was tortious but excusable, though this did not qualify the rule that a confession could only be received in evidence if it was voluntary; accordingly, the evidence that the appellant was in possession of the ammunition was properly admitted. (Kuruma Son of Kaniu *v.* Reginam. Privy Council) ... 157

8. Evidence; cross-examination of prisoner as to character; imputation on character of Crown witness; suggestion that untrue statement signed by prisoner was dictated by police inspector; Criminal Evidence Act, 1898, s. 1, proviso (*f*) (ii).—The appellant was convicted at Surrey quarter sessions of garage breaking and larceny, larceny, and garage breaking with intent, and was sentenced to five years' imprisonment. The appellant's defence was that, though he had been near the scene of the crimes when they were committed, he had not been in any way assisting the persons who committed them. He had made and signed a statement to the police which was, on the face of it, a complete confession, but he gave evidence that after the detective-constable who was taking the statement had written the caution at the heading a police inspector came into the room and dictated the statement to the detective-constable, and that it was untrue. The deputy-chairman ruled that counsel for the prosecution was entitled to cross-examine the prisoner on his previous convictions, on the ground that the nature or conduct of the defence was such as to involve imputations on the character of a witness for the prosecution within the meaning of s. 1, proviso (*f*) (ii), of the Criminal Evidence Act, 1898, and he was so cross-examined. He appealed on the ground that the cross-examination was inadmissible in law:—*Held*, that, as there had been an attack, not on the evidence of the inspector, but on his conduct outside that evidence, there had been an imputation on his character within the meaning of the section, and that the cross-examination was, accordingly, admissible. (R. *v.* Clark. C.C.A.) 531

9. False pretences; statement of intention about future conduct; Larceny Act, 1916, s. 32 (1).—A statement of intention about future conduct, whether or not it be a statement of existing fact, is not such a statement as can amount to a false pretence in criminal law. Where, however, a promise with regard to future conduct is coupled with a false statement of existing fact, if the latter can be proved in addition to the former, a false pretence is established. A statement with regard to the prisoner's readiness and willingness to pay money, though it may suggest in form a statement about future conduct, may, none the less, amount to a statement that the prisoner has, as an existing fact, the power and means to pay, and, as such, may constitute a false pretence. (R. *v.* Dent. C.C.A.) 512

10. Fraud by officer of company; transfer of property with intent to defraud; "public company"; company a private company within Companies Act, 1948; attempted cancellation of debt due from prisoner to company; Larceny Act, 1916, s. 20 (1) (ii); Companies Act, 1948, s. 330 (*b*).—For the purpose of a charge under the Larceny Act, 1916, s. 20 (1) (ii) of fraudulent misapplication of money by a director of a public company, a company incorporated under the Companies Act, 1948, and falling within the description of "private

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company " in s. 28 (1) thereof is to be regarded as a " public company." Re Lysaght [1898] 1 Ch. 115 and Re White [1913] 1 Ch. 231 applied. By s. 330 (*b*) of the Companies Act, 1948, an officer of a company is guilty of a misdemeanour if, with intent to defraud creditors, he has caused to be made " a transfer of . . . the property of the company." The cancellation or attempted cancellation by a company of a debt due to itself is not a " transfer of property " within s. 330 (*b*), and, accordingly, a count alleging that [the prisoner], being a director of a company, did, with intent to defraud creditors of the company, attempt to transfer to himself a debt owing from him to the company discloses no offence in law. (R. *v.* Davies. C.C.A.) ... 15

11. Indictment; charges of making seditious speech and of effecting a public mischief contrary to common law in respect of same speech; undesirability of charging both offences.—The appellant was indicted on three counts, the first and third of which charged him with sedition based on public speeches made by him. The second count charged him with a public mischief contrary to common law, the particulars of the offence being that he " did by means of certain false statements in a public speech . . . agitate and excite a certain section of the public against the police, to the prejudice and expense of the community." The jury failed to agree on the first count, and he was acquitted on the third count. On the second count, no evidence was given that any section of the public were agitated or excited by the speech. The trial judge, in his charge to the jury, directed them that they must, as a matter of law, find the appellant guilty of the offence of effecting a public mischief if they found that he spoke the words complained of. The appellant was found guilty on the second count and discharged conditionally:—*Held*, (i) it was a general principle of British law that, on a trial by jury, it was for the judge to direct the jury on the law and, in so far as he thought necessary, on the facts, but that the jury, while they must take the law from the judge, were the sole judges whether on the facts the accused was guilty; this principle extended to the crime of public mischief; and, therefore, it was a misdirection to tell the jury as a matter of law that they must convict the appellant if they found that he had spoken the words alleged. Observations of LORD ALVERSTONE, C.J., in R. *v.* Brailsford (1905) (69 J.P. 370, 374) considered; (ii) it was highly undesirable that the offences of sedition and of effecting a public mischief at common law (assuming that such a crime existed apart from conspiracy) should be charged in respect of the same speech; (iii) on the indictment as framed there was no evidence to go to the jury, and, accordingly, the appeal must be allowed and the conviction quashed. (Joshua *v.* Reginam. Privy Council.) 61

12. Obtaining credit by fraud; motor cycle acquired on hire-purchase; another motor cycle subject to hire-purchase given in part exchange; no debt created; Debtors Act, 1869, s. 13 (1).—The appellant obtained from a firm of motor cycle dealers a motor cycle under a hire-purchase agreement, giving in part exchange another motor cycle which he represented to be his own, but which, in fact, he had possession of under another hire-purchase agreement. Under the latter agreement instalments remained to be paid, and, therefore, the appellant was not entitled to part with the cycle to which it related. The firm allowed him £65 in respect of this motor cycle against the price of the motor cycle which he was acquiring from them. The

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appellant pleaded Guilty to obtaining credit to the amount of £65 under false pretences or by means of other fraud, contrary to s. 13 of the Debtors Act, 1869:—*Held*, that the plea should not have been accepted, because no debt had been created in respect of the £65, and, accordingly, no "credit" had been obtained by the appellant, and, therefore, the conviction must be quashed. (R. *v.* Mitchell. C.C.A.) ... 563

13. Receiving stolen property; joint charge; indictment; amendment; name of one prisoner struck out; power to convict individual prisoner proved to have received whole or part of property; Larceny Act, 1916, s. 44 (5).—The appellant was convicted of receiving stolen property. The court originally charged him and one X jointly with receiving, but, as the evidence led by the prosecution disclosed two separate receivings, the judge directed at the close of the case for the prosecution that the name of X be struck out of the count, so leaving the charge one against the appellant only. After the conviction of the appellant, the judge directed the jury to return a verdict of Not Guilty in respect of X on that count:—*Held*, (*per* LORD GODDARD, C.J., CASSELS, LYNSKEY and ASHWORTH, JJ.) that the position was covered by s. 44 (5) of the Larceny Act, 1916, and that, if the jury were satisfied on the evidence that the appellant received the whole or part of the stolen property they were entitled, by virtue of that subsection, to return a verdict accordingly; that it was entirely irregular to strike out of an indictment the name of an accused person after he had been arraigned and put in charge of the jury, and that this could not be done under the guise of amendment, but that, although the course adopted was entirely irregular, it was one which had in no way affected or prejudiced the appellant; and there was, therefore, no ground for interfering with the conviction. (R. *v.* Michalski. C.C.A.) 206

14. Sentence; conditional discharge; subsequent offence; sentence of borstal training; nominal sentence to be imposed in respect of earlier offence.—In April, 1954, the applicant was convicted at a court of summary jurisdiction of larceny and was conditionally discharged. In October, 1954, he was convicted at quarter sessions of office-breaking and larceny and was sentenced to borstal training. Quarter sessions declined to pass any sentence in respect of the earlier offence:—*Held*, that though, as a general rule, sentences of one day's imprisonment were not desirable, in the circumstances of the present case the proper course would have been to pass such a sentence in respect of the earlier offence, so that the conviction would rank as a conviction in the event of further offences being committed by the applicant. (R. *v.* Fry. C.C.A.) 75

15. Sentence; corrective training; petty offence; court to consider whether imprisonment for three years appropriate.—Inasmuch as corrective training is, in substance, a form of imprisonment, where an offender who has qualified for corrective training appears before a court in respect of a petty offence, the court should consider whether, in all the circumstances, three years is too long a period of imprisonment for the offence, and, if it comes to that conclusion, it should pass a shorter sentence of imprisonment and not a sentence of corrective training. (R. *v.* McCarthy. C.C.A.) 504

16. Sentence; corrective training; report of Prison Commissioners; police report; date of birth, and not merely age of prisoner, to be

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stated; Criminal Justice Act, 1948, s. 21 (4).—In police or prison reports the actual date of the prisoner's birth, and not his age, should be stated. (R. *v.* Rossi. C.C.A.) 198

17. Sentence; permitting premises to be used as brothel; maximum term of imprisonment plus fine; further term of imprisonment in default of payment; validity; Criminal Justice Act, 1948, s. 14 (1).—By s. 13 (2) of the Criminal Law Amendment Act, 1885, as amended by s. 3 of the Criminal Law Amendment Act, 1922, any person occupying premises who knowingly permits them to be used as a brothel shall be liable, on a second or subsequent conviction, to a fine not exceeding £220 or to imprisonment for a term not exceeding six months, or to both fine and imprisonment. The appellant, who had a previous conviction for the same offence, was sentenced at quarter sessions for knowingly permitting premises to be used as a brothel to six months' imprisonment and a fine of £200, or, in default, a further six months' imprisonment:—*Held*, that, in view of the provisions of s. 14 (1) of the Criminal Justice Act, 1948, empowering Courts of Assize or quarter sessions to impose a sentence of imprisonment in default of payment of a fine, the sentence was lawful. (R. *v.* Carver. C.C.A.) 204

18. Sentence; supervision order; qualifying conviction; sentence of fine with imprisonment in default of payment; Criminal Justice Act, 1948, s. 22 (1) (*a*).—An offender who on conviction has been sentenced to a fine with a period of imprisonment in default and has been committed to prison on non-payment, has not been sentenced to "imprisonment" within s. 22 (1) (*a*) of the Criminal Justice Act, 1948, and, accordingly, the conviction does not rank as a qualifying conviction for the making of a supervision order under the subsection. (R. *v.* Driscoll. C.C.A.) 347

19. Summing-up; burden of proof; receiving stolen goods.—Although there is no particular formula of words the use of which is essential to express effectively to the jury the burden of proof which lies on the prosecution, it is not sufficient to tell them merely that they must feel satisfied with regard to the prisoner's guilt. To direct them that they must be satisfied to the extent of feeling sure of the prisoner's guilt is appropriate. The use of the term "reasonable doubt" is best avoided. In a receiving case it is generally desirable to tell the jury that the prosecution will not have proved their case if an explanation of the possession of the goods consistent with innocence has been given by the prisoner which the jury, although they may not be convinced that it is true, think may be true. (R. *v.* Hepworth. R. *v.* Fearnley. C.C.A.) 516

20. Trial; direction to jury; public mischief; speech; direction to convict prisoner if he uttered the words complained of.—The appellant was indicted on three counts, the first and third of which charged him with sedition based on public speeches made by him. The second count charged him with a public mischief contrary to common law, the particulars of the offence being that he "did by means of certain false statements in a public speech . . . agitate and excite a certain section of the public against the police, to the prejudice and expense of the community." The jury failed to agree on the first count, and he was acquitted on the third count. On the second count, no evidence was given that any section of the public were

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21. Trial; two prisoners indicted and tried together; submission on behalf of one prisoner of no case to answer at close of case for prosecution; no evidence in fact remaining against that prisoner; submission overruled; evidence given by co-prisoner against that prisoner; conviction of both; duty of court with regard to conviction. —The appellant and one W were indicted and tried together on separate counts each of which alleged the forgery of a receipt. At the close of the case for the prosecution counsel for the appellant submitted that there was no case against the appellant to go to the jury. The judge, believing that the case against the appellant's fellow prisoner might be prejudiced if he withdrew the case against the appellant from the jury at that stage, overruled the submission. The co-prisoner gave evidence which was hostile to the appellant, and the appellant himself gave evidence. The jury convicted both prisoners, but, in fact, there was no evidence remaining against the appellant at the close of the case for the prosecution:—*Held*, that there being no evidence remaining against the appellant, it was the duty of the judge to withdraw the case from the jury, and the conviction must be quashed. Judgment of CHANNELL, J., in R. *v.* Cohen & Bateman (1909) (73 J.P. 352) applied. R. *v.* Power (83 J.P. 124; [1919] 1 K.B. 572) considered and distinguished. *Per curiam:* if two people are jointly indicted for the commission of a crime and the evidence does not point to one rather than the other and there is no evidence that they were acting in concert, both ought to be acquitted. (R. *v.* Abbott. C.C.A.) 526

22. Venue; receiving stolen goods; persons charged in one county with receiving goods in other counties; other similar cases pending in county of charge; Criminal Justice Act, 1925, s. 11 (1); Magistrates' Courts Act, 1952, s. 1 (2) (*b*).—The appellants, after being committed for trial by examining justices for the county of Montgomery, were convicted at Montgomeryshire quarter sessions of receiving stolen goods. The goods had been stolen in that county, but had been received by the appellants in the county borough of Southampton and in the county of Stafford respectively. In view of the facts that

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two other persons resident in the county of Montgomery were being proceeded against in that county for receiving property stolen from the same owners and that some of the witnesses for the prosecution were common to their cases and also to the cases of the appellants, a justice for the county of Montgomery had issued a summons under s. 1 (2) (*b*) of the Magistrates' Courts Act, 1952, requiring the appellants, who resided outside the county, to appear before a magistrates' court in the county.—*Held*, that, by reason of the nexus between all the cases, the justice had properly exercised his discretion under s. 1 (2) (*b*) of the Act of 1952 to issue a summons outside the county; that the summons was, therefore, lawfully issued; and that, accordingly, under s. 11 (1) of the Criminal Justice Act, 1925, the committal for trial and subsequent conviction were valid. *Per curiam:* A justice issuing a summons under s. 1 (2) (*b*) of the Act of 1952 should bear in mind that not only the interests of the prosecution, but also the interests of the defendant, are at stake. (R. *v.* Blandford. R. *v.* Freestone. C.C.A.) 306

EDUCATION

1. Local education authority; grant towards tuition fees at school chosen by parents; obligation to educate in accordance with the parents' wishes; breach of statutory duty; no right of action; Education Act, 1944, s. 76.—The plaintiff, a Roman Catholic, sent his twin sons to a Roman Catholic public school. He made applications to the defendants, the local education authority for the area in which he lived, for a full grant for tuition fees. The defendants did not provide a school for secondary grammar school education in their area, but, in the discharge of their duties under the Education Act, 1944, paid the fees of an independent school for boys qualified to attend it, as were the plaintiff's sons. At all material times the defendants were willing to provide places for the boys at the independent school in their area, but the plaintiff was not willing that the boys should go there. The defendants made grants towards the cost of the education of boys at the Roman Catholic school, but it was less than the full amount of their tuition fees. In an action by the plaintiff for, among other relief, a declaration that the defendants were under a duty to provide secondary grammar school education for the two boys at a school chosen by him, and for payment to him of the full amount of the tuition fees paid by him to the school concerned:—*Held*, (i) under the Education Act, 1944, s. 76, the defendants, as the local education authority, were bound to have regard to the general principle that pupils were to be educated in accordance with the wishes of their parents, but they were not under an absolute obligation to educate the the pupils in accordance with those wishes, and, therefore, they were not in breach of their duty under the section; (ii) even if a breach of statutory duty under s. 76 of the Act of 1944 were established, in the circumstances it would not give rise to a right of action for damages for breach of statutory duty. (Watt *v.* Kesteven County Council. Q.B.D.) 37

2. Schoolmaster; negligence; child at nursery school; permission to run on to highway; injury to vehicle driver in avoiding child; liability of education authority.—A child aged four years, while at a nursery school, was made ready to go out for a walk and was left by one of the mistresses with another child in a classroom. During the mistress's absence the child left the classroom and ran on the highway,

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causing the driver of a lorry to swerve violently to avoid him with the result that the lorry struck a telegraph post and the driver was killed. In an action for damages for negligence by the widow of the driver against the defendants, the education authority:—*Held*, (i) in the circumstances of the case, there was no negligence on the part of the mistress concerned; (ii) (by LORD GODDARD, LORD REID, LORD TUCKER and LORD KEITH OF AVONHOLM, LORD OAKSEY not concurring) the presence of a child as young as the child in the present case wandering alone outside the school premises in a busy street at a time when he was in the care of the appellants indicated a lack of reasonable precautions on the part of the appellants who had given no adequate explanation of the child's presence in the street, and, since it was foreseeable that such an accident as happened might result from the child being alone in the street, the appellants were guilty of negligence towards the deceased and were liable to the respondent in damages. Decision of the COURT OF APPEAL, *sub nom.* Lewis *v.* Carmarthenshire County Council (118 J.P. 51) affirmed on a different ground. (Carmarthenshire County Council *v.* Lewis. House of Lords) 230

3. School; supervision of pupils; pupil killed in accident on school premises; duty of education authority.—The plaintiff's son, R, aged nearly six, attended an infants' school which was under the control of the defendants as education authority. After the end of school hours in the afternoon the children dispersed into the school playground and stayed there until they were fetched by their mothers or other persons. There was no detailed supervision of the children during this time as they had been told that, if they had not been met within a few minutes, they should go back into the school and report. On June 27, 1952, R was found, shortly after being let out of school, lying unconscious and injured in the playground lavatory, having fallen through the glass roof of the lavatory which he had reached by climbing a nine-inch waterpipe. He died shortly after:—*Held*, there had been no failure to exercise reasonable care of R while he was in the charge of the school. *Per* MCNAIR, J.: school authorities, when considering the care of children in their charge, must strike some balance between the meticulous supervision of children every moment of time they are under their care and the very desirable object of encouraging the sturdy independence of children as they grow up. (Jefferey *v.* London County Council. Q.B.D.) 45

4. Wishes of parents; right of parent to choice of school; payment of fees by education authority; Education Act, 1944, s. 76.—The plaintiff, a Roman Catholic, had twin sons who had both passed the examination entitling them to a secondary grammar school education. There was no maintained school in the area, but the defendants, the local education authority, had made arrangements for boys in their area to be educated at an independent school, namely, Stamford School, for which they paid full tuition fees. The plaintiff did not wish his sons to attend Stamford School, and so he sent them to Roman Catholic preparatory and public schools, where part of the tuition fees were paid by the defendants. In an action by the plaintiff for, *inter alia*, a declaration that the defendants were in breach of their duty to provide secondary grammar school education for his sons under the Education Act, 1944, s. 76 of which provides that, so far as is compatible with the provision of efficient instruction

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and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents, and that he was entitled to be paid the full amount of the fees paid by him:—*Held*, that under s. 76 the defendants, while having regard to the general principle stated, were entitled to take administrative matters into account, and, while under a duty to make available education and to pay full tuition fees at an independent school with which they had made arrangements, they were not under an absolute duty to do so at any independent school of the parent's choice; in the present case they had had regard to the general principle; and, therefore, they were not in breach of their duty under s. 76. *Per curiam:* The duty laid on the education authority by s. 8 of the Act to secure the provision of primary and secondary schools can only be enforced by the Minister of Education under s. 99 (1) of the Act, and not by action at law. Decision of ORMEROD, J. (*ante*, p. 37) affirmed. (Watt *v.* Kesteven County Council. C.A.) 220

ELECTION

Parliamentary; redistribution of seats; report of boundary commission; method adopted by commission called in question; injunction to restrain minister acting on report; jurisdiction of court; House of Commons (Redistribution of Seats) Act, 1949, sch. 2, rr. 1, 5.—By s. 1 of the House of Commons (Redistribution of Seats) Act, 1949, permanent boundary commissions for England and Wales and Scotland were established. By s. 2 the commissions were charged to report to the Home Secretary as to any redistribution of seats, and the Home Secretary must lay the reports before Parliament, together with any draft order in council for giving effect to the recommendations of the commissions. By s. 3 (4), after approval by resolution of each House of Parliament, the Home Secretary has to submit the draft orders to Her Majesty in Council. By s. 3 (7) it is provided: "The validity of any Order in Council purporting to be made under this Act and reciting that a draft thereof has been approved by resolution of each House of Parliament shall not be called in question in any legal proceedings whatsoever." By sch. 2 of the Act guidance is given to the commissions as to the redistribution of the seats. Rule 1 provides that the number of constituencies in Great Britain shall be not substantially greater or less than 613, and, as the boundary commissions for Scotland and Wales intend to allocate 107 seats, the number of constituencies for England could not be substantially greater or less than 506. By r. 4 (1) the commissions, so far as practicable, are to have regard to the foregoing rules. By r. 5 "The electorate of any constituency shall be as near the electoral quota as is practicable having regard to the foregoing rules . . . " The electoral quota was 55,670. The boundary commission for England in its report to the Home Secretary presented on November 14, 1954 (Cmd. 9311), stated in para. 8 that they did not take the electoral quota of 55,670 as the basis, but proceeded on the assumption that the number of constituencies available for distribution in England was 506, and they allocated seats provisionally on the basis of 57,122 electors per constituency, arriving at that figure by dividing the total English electorate, *viz.*, 28,904,108 by 506. They then decided to increase the number of constituencies to 511. The Home Secretary adopted the recommendations made in the report, and laid draft orders in council before each House. One of the orders so approved was the Draft Parliamentary Constituencies (Manchester,

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Oldham and Ashton-under-Lyne) Order, 1954, which provided, *inter alia*, that the city of Manchester should comprise nine instead of 10 constituencies. Manchester corporation unsuccessfully protested against the recommendations of the commission. The plaintiffs, being the lord mayor of the city of Manchester and an alderman, commenced, as electors of constituencies to be changed by the draft order, proceedings against the Home Secretary for a declaration that the report of the boundary commission submitted to the Home Secretary did not comply with the rules set out in sch. 2 to the Act, and that he ought not to submit to Her Majesty in Council the said draft order, and for an injunction restraining the defendant submitting the draft order to Her Majesty in Council. The plaintiffs contended that the boundary commission had misdirected itself by adopting, not the electoral quota of 55,670, but the arbitrary figure of 57,122 as their basis. On December 17, 1954, counsel for the plaintiffs moved *ex parte* for an injunction in the terms of the writ:—*Held*, (i) the Court of Appeal had jurisdiction to entertain an appeal against an *ex parte* injunction, and, having regard to the special circumstances of the case, would hear the appeal; (ii) it was a matter for Parliament to determine and pronounce on; whether or not a particular line which commended itself to the commissioners was one which the court thought the best or the right line, the court would not interfere with the exercise of the discretion of the commissioners; and, therefore, the plaintiffs failed to establish a *prima facie* case and the *ex parte* injunction should be discharged. (Harper and Another *v.* Home Secretary. C.A.) 148

EXTRADITION

Political offence; crew of Polish trawler; political supervision; desire of members of crew to escape; trawler taken charge of by members of crew; captain and other members put under restraint; accusation of crimes within extradition treaty; evidence of prisoners of political character of offences; duty of magistrate; Extradition Act, 1870, s. 3 (1), s. 9.—The applicants, who were members of the crew of a Polish fishing trawler and were under political supervision while on board, believed that they would be severely punished for their political opinions if they returned to Poland. Accordingly, they took charge of the trawler, putting the master and some members of the crew under restraint and slightly wounding the political officer. They steered the vessel to the nearest English port, went on shore, and asked for political asylum. The Polish government requested their extradition, the principal offence alleged being revolt against the master of the ship on the high seas, an offence included in sch. I to the Extradition Act, 1870, and in the schedule to the treaty between the United Kingdom and Poland of 1932. At the hearing before the magistrate the applicants contended that the offence was of a political character and evidence was given on their behalf that by Polish law an attempt by a Pole to leave Poland was regarded as treason and was severely punished. The magistrate was satisfied that the acts done by the applicants were done solely with the object of escaping from Poland, but made a committal order in respect of each of them, leaving it to the High Court to decide whether the offences were of a political character. On applications by the applicants for writs of *habeas corpus*:—*Held*, that the words "offence of a political character" must always be considered according to the circumstances existing at the material time; that in the circumstances the offences in respect

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of which the extradition of the applicants was sought was of a political character, since the revolt of the applicants while on board was the only means open to them of escaping political supervision; and that, therefore, their surrender was demanded in respect of an offence of a political character within s. 3 (1) of the Act of 1870 and writs of *habeas corpus* would issue. (R. *v.* Brixton Prison Governor. *Ex parte* Kolczynski and Others. Q.B.D.) 68

FISHERIES

Private fishery; salmon and trout; owner of exclusive right of fishing; right to issue of general licence to fish; Salmon and Freshwater Fisheries Act, 1923, s. 61 (*g*).—The plaintiffs were joint owners of two several fisheries on the Hampshire Avon and were entitled to an exclusive right of fishing for salmon and trout in those fisheries. For many years down to and including 1953 general licences to fish had been granted to the plaintiffs, or one of them, in respect of each of those fisheries under the Salmon and Freshwater Fisheries Act, 1923, s. 61 (*g*), as modified under s. 93 (2) of that Act by the Hampshire Rivers Fisheries Provisional Order, 1922. The Avon and Dorset River Board, who were responsible for the issue of licences, found that the majority of the owners of the exclusive rights of fishing in their area had commercialized their fishing and that the issue of general licences (covering all persons who were permitted to fish by the owners of the fisheries) deprived the board of revenue which they would have received from the issue of a separate salmon, trout or coarse fish licence to each person who fished the waters covered by the general licences. The board, therefore, decided to withhold the issue of all general licences for 1954, and the plaintiffs, who had not commercialized their fishing, applied for general licences and were refused:—*Held*, the indiscriminate withholding by the board of all general licences was unjustified and the plaintiffs were entitled as of right under s. 61 (*g*) (as modified) to the issue to one or both of them of a general licence to fish for salmon or trout with rod and line subject to such conditions as might be agreed, or, in default of agreement, determined by the Minister of Agriculture and Fisheries, but without prejudice to the right of the board to withhold the licence in the event of any abuse or misuse or threatened abuse or misuse of the privileges conferred. (Mills and Another *v.* Avon and Dorset River Board. Ch.D.) 199

FOOD AND DRUGS

Food unfit for human consumption; piece of metal in bun; Food and Drugs Act, 1938, s. 9.—The appellants sold from a shop four chocolate cream buns, one of which contained a small piece of metal. They were convicted on an information under s. 9 of the Food and Drugs Act, 1938, charging them with having sold food which was intended for, but was unfit for, human consumption:—*Held*, that the bun was not rendered " unfit for human consumption " within the meaning of s. 9 (1) of the Act by reason of the presence of a small piece of metal, the section being aimed at the sale of putrid food, and that the appeal must be allowed. *Per* GLYN-JONES, J.: Proceedings should have been brought under s. 3 of the Act instead. (J. Miller, Ltd. *v.* Battersea Borough Council. Q.B.D.) 569

HIGHWAYS

1. Nuisance; re-paving by local authority; faulty lay-out of cellar

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covering; no duty of frontager to abate; Public Health (Amendment) Act, 1890, s. 35 (1).—The plaintiff was walking along a pavement forming part of the public highway when she tripped up over the cover of a coal cellar opening belonging to premises occupied by the defendant. The cover was not flush with the pavement around it and constituted a public nuisance, and that state of affairs was brought about by a faulty lay-out when the local authority re-paved the street. The local authority had adopted the Public Health (Amendment) Act, 1890, which provided in s. 35 (1) that "all cellar-heads . . . and coal-holes in the surface of any street . . . shall be kept in good condition and repair by the owners or occupiers of the same, or of the houses or buildings to which the same respectively belong." The plaintiff claimed damages from the defendant on the ground that he had adopted the nuisance and failed to abate it:—*Held*, s. 35 (1) did not put on frontagers the duty to abate a nuisance created by the local authority on the property of the frontagers forming part of the public highway, and, as the cellar-head and the surrounding were in good repair, the local authority only was liable for the nuisance. (Penney *v.* Berry. C.A.) 542

2. Private street works; apportionment of cost by local authority; objection; footpath repairable by inhabitants at large; statute applying to roads, but not to footpaths; Highway Act, 1835, s. 5, s. 23; Private Street Works Act, 1892, s. 7 (*b*).—By s. 23 of the Highway Act, 1835, "No road or occupation way made or hereafter to be made by and at the expense of any individual private person . . . shall be deemed or taken to be a highway which the inhabitants of any parish shall be compellable or liable to repair, unless . . ." certain conditions are fulfilled. Between 1938 and December, 1949, on a strip between a carriageway and premises belonging to certain frontagers a footpath was trodden down, and became dedicated to and was used by the public as a highway. In 1953 the local authority proposed to make a foot pavement of the width of 6 *ft.* on the site of the footpath, and approved specifications, estimates, and provisional apportionments with a view to charging the frontagers apportioned costs of private street works under s. 6 of the Private Street Works Act, 1892. Objection was made by the frontagers in accordance with s. 7 of the Act that the footpath was a highway repairable by the inhabitants at large, and that, therefore, they were excepted from the proposed charges. A court of summary jurisdiction overruled the objections and approved the specifications, estimates, and provisional apportionments, but this decision was reversed by quarter sessions. On appeal to the Divisional Court by the local authority:—*Held*, that s. 23 of the Act of 1835 did not apply to footpaths, and so the footpath, having been dedicated to the public as a highway, was repairable at common law by the inhabitants at large, and, therefore, by virtue of s. 7 (*b*) of the Act of 1892 the frontagers were not liable to bear the cost of the proposed private street works. (Richmond (Surrey) Corporation *v.* Robinson and Others. Q.B.D.) 168

HOUSING

1. Compulsory purchase; compensation; basis of assessment; freehold land; acquiring authority sitting tenant; "special suitability or adaptability of the land"; Acquisition of Land (Assessment of Compensation) Act, 1919, s. 2 (2), (3).—The claimant was the tenant for life of the freehold interest in certain property which was let to

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the acquiring authority under a 99 years' lease expiring in 1990. The acquiring authority having served the claimant with a notice to treat relating to his reversionary interest, the question arose which of the three following bases was the right one for assessing the compensation due to the claimant having regard to the rules contained in s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919—(i) applying rr. 2 and 3, what an outsider—not the sitting tenant—would pay for the freehold interest as an investment; or (ii) excluding r. 3, what a sitting tenant, but not the acquiring authority, would pay; (iii) what the acquiring authority in a friendly negotiation would be willing to pay to acquire the interest for its purposes in the absence of any compulsory powers of acquisition:—*Held*, that the compensation had to be assessed on the basis of the value which the acquiring authority, in a friendly negotiation, would be willing to pay in acquiring the freehold interest for its purposes and as though no compulsory powers of acquisition had been obtained. (Lambe *v.* Secretary of State for War. C.A.) 415

2. Compulsory purchase; compensation; disturbance of business; loss of contracts; income tax on lost profits not to be considered; Acquisition of Land (Assessment of Compensation) Act, 1919, s. 2 (2), (6). Premises occupied by a manufacturing company under a lease were compulsorily acquired by the local authority. The company was unable to find other premises for a period of nine months, and lost three beneficial contracts. The acquiring authority contended that, in assessing compensation under rr. 2 and 6 of s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, income tax to be paid by the company on the profits from those contracts must be taken into consideration:—*Held*, income tax matters were, so far as the acquiring authority was concerned, *res inter alios actae*, and should not be taken into account when assessing compensation under the Act of 1919. (W. Rought, Ltd. *v.* West Suffolk County Council. C.A.) 433

3. Compulsory purchase; jurisdiction to question validity of order; Acquisition of Land (Authorisation Procedure) Act, 1946, sch. I, part IV, para. 16.—The plaintiff was the owner of land which was requisitioned in 1940 by the first defendants, the local requisitioning authority. On August 27, 1948, while the property was still requisitioned, the first defendants made a compulsory purchase order in respect of the property, and on November 29, 1948, that order was confirmed. On January 21, 1951, the property was de-requisitioned, and on the same day the first defendants entered upon and occupied it. On July 6, 1954, the plaintiff issued a writ against the first defendants, the Ministry of Health, the clerk to the first defendants, and the Ministry of Housing and Local Government as second, third and fourth defendants respectively, claiming, *inter alia*, declarations that the compulsory purchase order was wrongfully made and confirmed, and in bad faith. The defendants then applied that the writ be set aside on the ground that it was invalid for lack of jurisdiction since it was provided by para. 16 of part IV of sch. I to the Acquisition of Land (Authorisation Procedure) Act, 1946, that a compulsory purchase should not be questioned in any legal proceedings. An order to set aside the writ and all subsequent proceedings was made, and, on appeal, the plaintiff contended that the compulsory purchase order referred to in para. 16 applied only to a compulsory purchase of land of the type dealt with by part III of sch. I, and that, as the plaintiff's land did not come within part III, para. 16 was inapplicable:—

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Held, the reference to a compulsory purchase order in para. 16 was a reference to all compulsory purchase orders, and was not limited to a compulsory purchase order in respect of land which formed the subject-matter of the procedure laid down in part III of sch. I. (Smith *v.* East Elloe Rural District Council and Others. C.A.) ... 325

4. Differential rent scheme based on tenant's income; validity; Housing Act, 1936, s. 85 (6).—The defendant corporation, as housing authority, erected houses under part V of the Housing Act, 1936. As a result of an estimated prospective deficit in the housing revenue account, the corporation adopted a differential rent scheme, details of which were notified to each tenant in a circular letter dated June 26, 1953, and containing a form to be completed with information as to the tenant's occupation, his gross income, and details regarding other members of the household. The total addition to the basic rent in respect of any tenancy was not to exceed 12*s.* 6*d.* per week. From the information obtained the corporation re-assessed the rents of a number of tenants and served notice to quit on them terminating their weekly tenancies on August 17, 1953, but offering them new tenancies on the terms of the re-assessment notices which stated that the rent was calculated by reference to a basic rent and additions based on the tenants' gross income and the persons residing on the premises. Out of a total of 14,267 houses 6,826 tenants were affected. An appeals sub-committee was set up to consider and make recommendations in cases of hardship. The plaintiffs, who were tenants of council houses, claimed that the differential rent scheme was *ultra vires*:—*Held*, the method of surcharging the tenants of particular houses according to their income was not *ultra vires*, as a review of rents under s. 85 (6) of the Housing Act, 1936, might include the grading up of particular rents and was not confined to the making of rebates; the scheme, though not perfect in operation, in the circumstances was not unreasonable; and, therefore, it was valid. (Smith and Others *v.* Cardiff Corporation. Ch.D.) 128

HUSBAND AND WIFE

1. Cruelty; persistent cruelty; sodomy with wife; corroboration.—On the hearing of a summons against the husband on the ground of persistent cruelty, the wife alleged as evidence of cruelty that he had twice committed sodomy on her against her wish, had repeatedly tried to force her to submit to sodomy, and had once insisted on her masturbating him. Evidence was given : (i) that, after the second act of sodomy, the husband told the wife that, if she bought vaseline it would not hurt so much (the husband said in evidence that the vaseline was required for some other purpose); (ii) that the wife said to the husband in the presence of a police officer: " Look at what you made me do on Wednesday night before I went to my mother's," and the husband replied: " That is personal between us " (which the husband said referred to a discussion about money); and (iii) that the husband had offered to buy two single beds if the wife would return to him. The justices directed themselves that corroboration of the wife's evidence was desirable, but not necessary. They rejected the husband's explanations of the husband's reasons for buying vaseline and of the statement before the police officer, which they accepted as applying to the masturbation, and they treated the evidence on the three allegations as corroboration. They found the husband guilty of persistent cruelty:—*Held*, although corroboration was desirable

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of a woman's evidence of such sexual acts, as it was in criminal prosecutions of evidence of an accomplice (which the wife was not, since she had not consented), it was not necessary, and the justices were entitled to come to the conclusion that the wife's evidence was true without it and their decision must be upheld. *Semble*, the husband's admission of the suggested purchase of vaseline and his false explanation could constitute corroboration of the sodomy, but not the evidence of the second indictment which was not capable of being related to masturbation, nor that of the single beds, which was irrelevant. (Lawson *v.* Lawson. C.A.) 279

2. Cruelty; sexual offences by husband against third parties; indecent assault by him on child of marriage.—The parties were married in December, 1940, and there was one child of the marriage, a girl born in October, 1944. In 1947, after a serious quarrel in which, according to the wife, her thumb was dislocated, the parties separated. They resumed cohabitation in 1950, but after a month the husband, then in the army, was posted overseas. In July, 1953, they again resumed cohabitation. On April 19, 1954, the husband was, according to the wife, rude to some guests invited home by her. On April 20 he indecently assaulted the child of the marriage. That evening there was a quarrel between the husband and the wife, in which, according to the wife, he struck her and knocked her down. The husband then left the matrimonial home and the parties never again resumed cohabitation. Later, as a result of a remark made to the wife by the child of the marriage, the wife informed the police who arrested the husband and charged him with indecently assaulting the child. He was remanded in custody and subsequently pleaded Guilty to the charge of indecent assault, being fined £20. On April 28 the wife complained to the justices, *inter alia*, that the husband had been guilty of persistent cruelty towards her. The justices dismissed the complaint and the wife appealed:—*Held*, in determining whether or not cruelty had been established it was essential to judge every act in relation to its attendant circumstances, the condition or susceptibilities of the innocent spouse, the intention of the offending spouse, and the offender's knowledge of the actual or probable effect of his conduct on the other's health; although the assault on the child of the marriage did not take place in the wife's presence, it was an act which any man of ordinary intellectual capabilities must have realized would cause her the gravest distress and possibly severe injury to her health; the two incidents on April 20 together with the rudeness to the guests, must be taken together to form a composite picture for the purpose of ascertaining whether the acts amounted to cruelty, and the case would be remitted to the justices for re-consideration. (Cooper *v.* Cooper. P.D. & A.) 1

3. Cruelty; wife's persistent refusal to allow conception of child.—From the beginning of the marriage the wife insisted on the use by the the husband of contraceptives, and, despite his repeated protests, refused to have a child. Her conduct was intentional in that, although she knew the practice she insisted on was repulsive to him and that his desire for fatherhood had become an obsession, she pursued her policy, and, as a result, his health suffered:—*Held*, that, if a wife deliberately and consistently refuses to satisfy her husband's natural and legitimate craving to have children, and the deprivation affects his mental health, she is guilty of cruelty.—(Forbes *v.* Forbes. P.D. & A.) 403

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4. Desertion; constructive desertion; conduct equivalent to expulsion of other spouse ; inference of intention to end *consortium*; husband's persistent cruelty to wife; persistence despite wife's threats to leave matrimonial home; Marriage Act, 1928 (Victoria) (No. 3726 of 1928), s. 75 (*b*), (*d*).—The parties were married in South Australia in November, 1924 and for a number of years the matrimonial relationship was fairly happy, but from 1942 (when the husband returned from serving abroad in the armed forces) until 1948 the husband grossly ill-used and insulted the wife. In April, 1943, she left him for some two months, but she was induced to return to him by promises of his better behaviour, which were, however, continuously thereafter violated. In July, 1948, after being treated with such violence that the police had to be called in, she asked him to leave, which he did. He returned, however, in August, 1948. A few days after his return, he forced sexual intercourse on her in circumstances of calculated and revolting indignity, and told her that he was going to use her for the same purpose whenever he wanted to and as often as he wanted to. She then finally left him and, ignoring various letters from him begging her to return to him, but not expressing any intention of treating her differently if she did, in October, 1951, she presented a petition for divorce on the ground that the husband had without just cause or excuse wilfully deserted her and had continued in desertion for three years and upwards. In September, 1952, she was granted a decree *nisi*. On appeal by the husband:—*Held*, if the whole of the husband's conduct is such that a reasonable man must know that it will probably result in the departure of his wife from the matrimonial home, the fact that he did not wish this consequence to ensue does not rebut the inference that he intended the probable consequences of his acts and thus intended his wife to leave the home; in the present case, the husband must have known that his conduct would necessitate his wife leaving him if she acted as a reasonable being; and, therefore, he had constructively deserted her. (Lang *v.* Lang. Privy Council) 368

5. Desertion; constructive desertion; alleged belief in wife's adultery; wife in love with another man; husband leaving matrimonial home after wife's request for his help.—The parties were married in 1940 and there were two children of the marriage. In the summer of 1949 the wife fell in love with one W. On May 25, 1950, the wife told the husband that she was in love with W and asked him (the husband) to help her to overcome the attraction. There was a conversation between them which, the husband alleged, convinced him that the wife had committed adultery with W. On May 29, 1950, the husband left the matrimonial home. On May 31, 1950, W wrote to the husband and as a result they had lunch together, but they did not refer to the question whether or not W and the wife had committed adultery. The husband made no inquiries of anyone in respect of this question and made no allegation of adultery against W but he refused the wife's request that he should return to her. On July 6, 1953, the husband presented a petition for divorce on the ground of desertion, alleging in effect that by her conduct the wife had made him believe that she had committed adultery, that he had in consequence left the matrimonial home, and that she had, therefore, deserted him. The wife denied desertion and cross-prayed for a divorce on the grounds of the husband's desertion:—*Held*, (i) on the facts, the husband did not *bona fide* believe that the wife had com-

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mitted adultery; even if he did hold that belief there were no reasonable grounds for it; and, therefore, his petition would be dismissed; (ii) the fact that a wife confessed to her husband that she was in love with another man and wanted his help to put an end to the situation would not amount to just cause for his leaving her; on the contrary, it was the husband's duty to afford his wife all the help that he could; and so, when the husband left the matrimonial home on May 29, 1950, he left without just cause and deserted the wife, and a decree would be granted in her favour. (Forbes *v.* Forbes. P.D. & A.) 30

6. Desertion; continuance of desertion; determination of deserted spouse not to take back deserting spouse; deserting spouse deprived of *locus poenitentiae* and prevented from attempting reconciliation.—The parties were married in 1919. In 1946 the husband started going out alone on Sunday afternoons and evenings, but would not tell the wife where he went. She also found stains on his handkerchiefs which appeared to her to be caused by lipstick. In January, 1947, she intercepted two letters written to her husband by another woman, and in consequence she withdrew from the matrimonial bedroom, but the parties continued to live as one household. On June 18, 1949, the husband ceased to make any weekly allowance to the wife, and on or about July 9, the wife ceased to perform any wifely duties for the husband. On July 19 the wife caused a summons to be issued against the husband on her complaint that he had wilfully neglected to provide reasonable maintenance for her. On August 9 the complaint was heard and the case adjourned. On September 2 the husband threw the wife's clothes out of his room which he thereafter kept locked against her. On November 3 the wife's complaint was dismissed. Shortly afterwards the wife fitted a lock to her room to keep the husband out and to prevent him eating his meals there, telling him that, if he would not have her, she would not have him. In 1952 the wife was forced to give up work, and on December 4 of that year she caused a summons to be issued against the husband on her complaint that he had deserted her and had wilfully neglected to provide reasonable maintenance for her. On January 1, 1953, the complaints were dismissed. On November 13, 1954, the husband filed a petition for divorce on the ground of the wife's desertion. By her answer the wife denied desertion and cross-prayed for a divorce on the ground of the husband's desertion:—*Held*, (i) the husband's behaviour in 1946 and 1947 in staying out every Sunday afternoon and evening and refusing to give any reason, together with the discovery of the stains resembling lipstick and of the two letters written by another woman, justified the wife in withdrawing from the matrimonial bed in 1947, and thereafter the husband had made no attempt to effect a reconciliation, but had in fact made it as clear as he could that he wanted no more to do with her, and, therefore, he was not able to show that during the three years preceding the presentation of his petition the wife was separated from him without his consent, and his petition would be dismissed; (ii) although the wife was justified in withdrawing from the matrimonial bed in 1947, it did not follow that the justification was more than temporary, and it was a relevant consideration that she had at no time made any charge of adultery; (iii) the *de facto* separation between the parties which had subsisted since the autumn of 1949 had been initially brought about by an act of desertion on the part of the husband, but, by fitting a lock and telling the husband that, if he would not have her, she would not

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have him, the wife had evinced a firm and decisive determination that he should not return to her, thereby depriving him of any *locus poenitentiae* and preventing him from attempting a reconciliation, and, therefore, the cross-prayer would be dismissed. (Fishburn *v.* Fishburn. P.D. & A.) 86

7. Desertion; continuance; reconciliation; efforts of deserting spouse towards reconciliation insufficient to end desertion.—The fact that a wife, when suffering from a deep sense of grievance, had told her husband, who showed no sign of contrition for having spent on his own pleasure money which she had given him to pay for furniture and for having deserted her, that she did not want to see him any more, *held* not to exonerate him from the necessity of doing something to bring to an end the state of desertion which he had started; it was open to the magistrate to find, as he did, that such apparent efforts as the husband did make were not genuine; and, accordingly, the husband had continued to be in desertion. (Bevan *v.* Bevan. P.D. & A.) ... 576

8. Divorce; evidence; privilege; statements made to conciliator; vicar acting as conciliator. *NOTE*, (Henley *v.* Henley (Bligh cited). P.D. & A.) 215

9. Domestic proceedings; procedure; party appearing in person and giving evidence; inability effectively to cross-examine; party's case not put to witnesses on other side; duty of court; Magistrates' Courts Act, 1952, s. 61.—By s. 61 of the Magistrates' Courts Act, 1952, where in any domestic proceedings it appears that a party who is not legally represented is unable effectively to examine or cross-examine a witness, "the court shall ascertain from that party what are the matters about which the witness may be able to depose or on which the witness ought to be cross-examined . . . and shall put . . . to the witness such questions in the interests of that party as may appear to the court to be proper." At the hearing of a complaint by a wife under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, that the husband had deserted her, the wife was legally represented, but the husband was not. The wife gave evidence that the husband had left the flat where they were living together in August, 1953, that he had returned in April, 1954, and had left again on July 17, taking with him two-thirds of the furniture. The husband asked only one question of the wife in cross-examination. He then himself gave evidence to the effect that he had returned in April, 1954, and had told his wife he would stay with her on condition that they moved to another flat, but that when he had found one she refused to move with him. He also said that he wanted her back. These matters were not put to the wife. The court found the wife's case proved and made a maintenance order in her favour:—*Held*, it was the duty of the court under s. 61 to put the husband's case to the wife, to see what her answers were, and then to adjudge the case on all the information before the court; the present case had not been duly tried; and, therefore, the order for maintenance must be set aside and the case remitted for re-hearing by a fresh panel of justices. (Fox *v.* Fox. P.D. & A.) 42

10. Maintenance; charge by wife of adultery against husband; corroboration; husband not legally represented; no cross-examination of wife; duty of court; Magistrates' Courts Act, 1952, s. 61.—On October 17, 1954, the husband left the matrimonial home and went to live in the

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house of a Mrs. B. On November 17 the wife caused a summons to be issued against the husband under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, on her complaint that he had deserted her and had committed adultery with Mrs. B. On December 8 the husband wrote a letter to the clerk to the justices in which he complained of the wife's dirty habits. On December 10 the wife's complaints were heard by the justices, the wife being legally represented, but not the husband. The wife gave evidence that the husband had been associating with Mrs. B before he went to live at her house and that he had admitted to her (the wife) that he was sleeping with Mrs. B. The wife was not cross-examined on any of the matters set out in the husband's letter of December 8. The husband then gave evidence. He admitted that he left home on October 17 and said that he agreed with the wife's "evidence of association," but he denied that he had ever committed adultery with Mrs. B. He concluded his evidence in chief by saying: "I feel I was justified in leaving my wife. The letter produced [of December 8] is in my handwriting and is all true." The husband gave no other evidence in chief to rebut the charge of desertion. Until that moment the wife's representative was unaware of the existence of the husband's letter, or of the nature of the husband's complaints against the wife. The justices then announced through their clerk that they dismissed the charge of adultery for want of corroboration. Thereupon the husband was cross-examined and stated that the wife was "dirty in every respect." The wife's representative applied for an adjournment in order to call witnesses to refute the husband's allegations. The justices refused the application, but allowed the wife to be recalled. The wife's representative then sought to submit that the husband had failed to put forward a defence to the charge of desertion, but the justices declined to hear the submission, and dismissed both complaints. On appeal by the wife:—*Held*, the justices' conclusion could not be supported for the following reasons: (i) in view of the husband's admission of the wife's evidence as to his association with Mrs. B and of his failure to deny the wife's evidence that he admitted adultery with Mrs. B, it was impossible to say there was no corroboration of that charge; (ii) the clerk to the justices should either have handed the husband's letter of December 8 to the wife's representative at the opening of the case or have read it in open court, and, further, it was the duty of the court under the Magistrates' Courts Act, 1952, s. 61, to see that the matters set out in the husband's letter were put to the wife in cross-examination; (iii) it was wrong to confine the husband's evidence on the charge of desertion to the words: "The letter . . . is all true," and to deny the wife the opportunity to call witnesses to refute the husband's allegations; (iv) it was also wrong to refuse to hear the submission of the wife's representative on a point of law; and, accordingly, the case would be remitted for re-hearing. (Marjoram *v.* Marjoram. P.D. & A.) 291

11. Maintenance order; enforcement of order; order made by Gibraltar magistrate registered in magistrate's court in England; no jurisdiction in English court to hear complaint by husband for variation or discharge of registered order; Maintenance Orders (Facilities for Enforcement) Act, 1920, s. 1 (1).—On March 17, 1952, the husband was ordered by a magistrate's court at Gibraltar to pay maintenance to the wife. In July, 1952, he came to England. In July, 1953, the Gibraltar order was registered at the West London Magistrate's

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court under s. 1 (1) of the Maintenance Orders (Facilities for Enforcement) Act, 1920, and the husband applied by complaint to the West London court for its revocation. The complaint was transferred to the Chelsea Domestic Proceedings Court, where, on November 3, 1953, the order was revoked. On November 10, 1953, the presiding magistrate added to the minute of adjudication of November 3, the entry: "Dealt with in error. Not served and no jurisdiction." The entry was made by the magistrate on his own initiative and without re-assembling the Chelsea court. On January 26, 1954, the West London magistrate heard an application on behalf of the wife for the enforcement of arrears alleged to be due under the Gibraltar order. The magistrate held that the entry of November 10 was ineffective and that the order of November 3 still stood. The arrears up to November 3 were agreed at £180, and the magistrate adjourned the question of enforcing them until February 23, 1954, when he adjourned the summons *sine die* on the terms that the husband should pay them by a certain sum per week. On November 30, 1954, the West London magistrate dismissed a further application on behalf of the wife to enforce arrears said to have accrued due since November 3, 1953:—*Held*, section 1 (1) of the Maintenance Orders (Facilities for Enforcement) Act, 1920, was limited to enforcement and did not enable complaints to be maintained for variation or discharge of orders registered by virtue of that subsection, and so the orders of November 3, 1953, and January 26, February 23, and November 30, 1954, would be set aside, the husband's complaint for revocation of the Gibraltar order would be dismissed, and the two complaints on behalf of the wife for the enforcement of arrears would be remitted to the West London court for re-hearing. (Pilcher *v.* Pilcher. P.D. & A.) 458

12. Maintenance; order in favour of wife; application by wife to increase amount of order; application by husband for discharge of order on ground of wife's desertion:—On November 11, 1954, justices found that the husband had been guilty of wilful neglect to provide reasonable maintenance for the wife and the child, and ordered him to pay her £2 10*s.* per week. On January 6, 1955, the wife applied for an increase in the amount payable under the order on the ground that she was no longer in employment. At the hearing of her complaint the husband gave evidence to the effect that the wife had deserted him since the making of the order, and asked that the order should be discharged. The justices found against the husband and increased the maintenance:—*Held*, on a complaint, like the present, by a wife for an increase in the amount of a maintenance order, the justices had no jurisdiction, in the absence of a complaint laid by the husband to discharge the order, to consider any application by the husband for the discharge of that order and should not have considered that matter, although they were entitled to consider the conduct of the parties when deciding whether or not to vary the amount. (Trathan *v.* Trathan. P.D. & A.) 451

13. Maintenance; wilful neglect to maintain; reasonable and honest belief in wife's adultery; connivance or conduct conducing by husband.—H and his wife were married in 1937. The wife formed a close friendship with P, who was a married man separated from his wife. For about two years before 1954 P spent most evenings with H's wife. At times they were out late together, and, according to

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evidence which was accepted, P practically lived at the home of H and his wife. Although H's wife and P were on affectionate terms, there was no proof of adultery. In 1954, after an occasion when, in the presence of H, H's wife and P's wife, P said that he preferred H's wife to his own, H stopped payments to his wife and left their home. H's wife took summary proceedings against H alleging that he had wilfully neglected to provide reasonable maintenance for her. The justices found that H had, at the time when he withdrew from cohabitation, a reasonable *bona fide* belief that his wife had committed adultery with P:—*Held*, where, in answer to a complaint made under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, by a wife against her husband that he has wilfully neglected to provide reasonable maintenance for her, he asserts that he reasonably believed that she had committed adultery, he cannot maintain a defence based on that alleged belief if the wife's conduct has been brought about or actively promoted by him; it is immaterial whether this principle is founded on analogy to the defences of connivance at the adultery or of conduct conducing to the adultery, which defences are mentioned in s. 6 of the Summary Jurisdiction (Married Women) Act, 1895, or is an illustration of the maxim *volenti non fit injuria*; but on the facts of the present case H had neither connived at, nor had he by his conduct conduced to, the conduct of of his wife with P, and there was evidence to support the justices' conclusion that H had reasonably and honestly drawn the inference, induced by his wife's conduct, that she had committed adultery with P; and, therefore, the appeal would be dismissed. (Hartley *v.* Hartley. P.D. & A.) 248

14. Obligation to maintain wife; separation agreement; no covenant to maintain wife; wife assisted by National Assistance Board; claim by board to recover from husband; no matrimonial offence by wife; National Assistance Act, 1948, s. 42, s. 43.—A husband and wife separated by agreement, the agreement containing no express or implied provision that the husband should maintain his wife. The wife obtained assistance from the National Assistance Board, and, on an application by the board under s. 43 of the National Assistance Act, 1948, the justices ordered that the husband should pay a weekly sum to the board. The wife had not committed any matrimonial offence. In another case a husband and wife entered into a separation agreement under which they agreed to live apart and the wife covenanted not to claim financial provision from the husband and that neither she nor anyone on her behalf would take judicial proceedings to compel him to make financial provision for her. The wife having obtained assistance from the National Assistance Board, an application that the husband should pay a weekly sum to the board was dismissed by the justices on the ground that the separation agreement constituted a bar. The wife had committed no matrimonial offence:—*Held*, that where a wife, who has committed no matrimonial offence but is living apart from her husband by virtue of an agreement with him, has obtained assistance from the National Assistance Board, the board is entitled to obtain from justices an order against the husband for payments, weekly or otherwise, and the court is not bound by any agreement between the parties excluding financial provision for the wife. The justices in the first case, therefore, had come to a right, and those in the second case to a wrong, decision. (Stopher *v.* National Assistance Board. National Assistance Board *v.* Parkes. Q.B.D.) 272

JUSTICES PAGE

Case Stated; procedure; desirability of submitting justices' draft to parties.—Observations on the practice to be followed with regard to Cases Stated. (Cowlishaw *v.* Chalkley. Q.B.D.) 171

LANDLORD AND TENANT

1. New lease; request by tenant; reversion acquired by local authority; opposition to new lease; notice of application to government department for certificate served on tenant within two months of request; effect of request; Landlord and Tenant Act, 1954, s. 57 (4) (*b*).—The tenant held premises used by him as a fried fish shop under a seven years' lease which expired on February 28, 1955. On November 22, 1954, he applied under s. 26 (1) of the Landlord and Tenant Act, 1954, to the landlord for the grant of a new tenancy. On January 19, 1955, the reversion of the premises was conveyed to the local authority who notified the tenant that they had applied to the Home Secretary under s. 57 of the Act for his certificate that it was requisite for their purposes that the premises should be occupied by members of their police force from March 1, 1955. The local authority objected to the grant of a new tenancy on the ground that, by virtue of s. 57 (4) of the Act, the tenant's request became of no effect. The question for the decision of the court was whether the local authority was entitled to rely on that subsection notwithstanding the fact that, at the date when the request for a new tenancy was made, they were not the landlords of the property in question:—*Held*, a local authority who became landlord after the date of the request by the tenant for a new tenancy was not disabled from putting in, within the two months' period mentioned in s. 57 (4) (*b*), a notice of opposition based on one or more of the grounds contained in s. 30 of the Act, and, therefore, the request of the tenant was of no effect. (X.L. Fisheries, Ltd. *v.* Leeds Corporation. C.A.) 519

2. Rent control; premium; requirement of payment as condition of grant of lease; sum paid as "commuted rent"; Landlord and Tenant (Rent Control) Act, 1949, s. 2 (1), (5).—By an underlease dated November 4, 1952, the landlord let to the tenant a flat which was a dwelling-house within the meaning of the Rent Restrictions Acts "in consideration of the sum of £850 paid by the tenant to the landlord . . . and of the rent and covenants by the tenant hereafter reserved and contained. . . ." The tenant claimed the return of the sum of £850 as a premium which could not be lawfully required in view of the provisions of s. 2 (1) and (5) of the Landlord and Tenant (Rent Control) Act, 1949. Oral evidence was admitted that the landlord regarded the £850 as a capitalized amount of part of the rent which he could lawfully demand, that the sum represented a discounted calculation, reached by bargaining, of the full amount which the landlord regarded himself as entitled to claim on account of rent, and that the the tenant fully apprehended that the landlord had in mind that the sum was "commuted rent."—*Held*, evidence was admissible to prove the true nature of the transaction; the tenant had failed to establish that the £850 was a premium required by the landlord as a condition of the grant of the lease; and, therefore, the case did not come within s. 2 of the Act of 1949 and the action failed. (Woods *v.* Wise. C.A.) 254

LICENSING

1. Club; application to strike off register; refusal by justices to strike

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off; power to order costs against club.—Where a summons is issued calling on a club to show cause why it should not be struck off the register and the justices refuse to strike off, they have no jurisdiction to order the club to pay costs. (R. *v.* Glamorganshire Justices. *Ex parte* Barry Dock Coronation Working Men's Club and Institute. Q.B.D.) 218

2. Extension of permitted hours; supper hour certificate; intoxicating liquor served with supply of food; a "meal"; sandwich; Licensing Act, 1953, s. 104 (4) (*a*).—Licensing justices had granted to a restaurant licence-holder a supper hour certificate under s. 104 of the Licensing Act, 1953, authorizing him to extend the permitted hours from 10.30 *p.m.* to 11.30 *p.m.* At 10.30 *p.m.* on the day in question a waitress asked all customers: "Are you staying?" She had with her sandwiches and sausages on sticks, and to the customers who indicated their intention of staying she served such food as they required, usually sandwiches, and took payment. Customers were served with intoxicating liquor at or soon after the time when the food was supplied and on subsequent occasions up to 11.20 *p.m.*, no additional food being supplied on those occasions. The justices were of the opinion that the respondent was genuinely serving food, and not using the pretence of serving it as an excuse to serve drinks for an additional hour, and they dismissed the information. On appeal:—*Held*, that the justices having applied their minds to the right considerations, there being evidence on which they could come to the conclusion to which they did, and the issue being one purely of fact for the justices, the appeal must be dismissed. (Solomon *v.* Green. Q.B.D.) 289

3. Licence for term of years held subject to conditions; desire to surrender and obtain full unrestricted licence; refusal of justices to hear application.—In 1954 a licence for the sale of intoxicating liquor was granted to the owners of hotel premises until July 5, 1957, subject to certain conditions. In March, 1955, the holders of the licence applied for a new annual licence free from some of the conditions, offering to surrender the existing licence. The justices were of opinion that they had no jurisdiction to grant an application of that kind and refused to hear it:—*Held*, that the current licence could be surrendered and another licence granted in its place, and that *mandamus* must issue directing the justices to hear and determine the application. (R. *v.* Godalming Licensing Committee. *Ex parte* Knight and Another. Q.B.D.) 441

LOCAL GOVERNMENT

1. Byelaw; validity; prohibition of nuisance by noisy animals; statutory provision against animal being kept "in such a place or manner as to be prejudicial to health or a nuisance"; Public Health Act, 1936, s. 92 (1) (*b*); Local Government Act, 1933, s. 249 (4).—By s. 92 (1) (*b*) of the Public Health Act, 1936 "any animal kept in such a place or manner as to be prejudicial to health or a nuisance" is a "statutory nuisance" which can be dealt with summarily. On February 28, 1951, a county council, acting under the powers conferred by s. 249 (1) of the Local Government Act, 1933 "for the prevention and suppression of nuisances" made a byelaw, which was duly confirmed, whereby "no person shall keep within any house, building, or premises any noisy animal which shall be or cause

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a serious nuisance to residents in the neighbourhood." By s. 249 (4) where, by or under any enactment in force in any area provision is made for the prevention or suppression in a summary manner of any nuisance, power to make byelaws under the section is not exercisable in that area. The defendant was charged under the aforementioned byelaw with keeping a number of noisy animals, namely, greyhounds, on his premises and contended that the byelaw was *ultra vires*:—*Held:* that the subject-matter of s. 92 (1) (*b*) of the Act of 1936, which provided for the suppression summarily of nuisances caused by insanitary and defective premises, but made no reference to noisy animals, was different from the subject-matter of the byelaw, and that, therefore, the byelaw was valid. (Galer *v.* Morrissey. Q.B.D.) 165

2. Transport undertaking; scheme to provide free travel for old, needy persons; legality.—The defendant local authority was authorized by statute to operate a transport undertaking and to charge such fares to passengers travelling on their vehicles as they thought fit, subject to any prescribed statutory maxima for the time being in force and subject also to their obligation under the Road Traffic Act, 1930, to adhere to any scale of fares fixed by the licensing authority. With the consent of the licensing authority, but without any statutory authority the local authority provided free travelling facilities at certain hours on tramway cars and omnibuses within their district for a limited class of women over 64 years of age and men over 69. The scheme was estimated to cost £90,000 *per annum*, and, as the transport undertaking was being run at a loss, that cost fell to be defrayed out of the general rate fund. The plaintiff, a ratepayer, claimed a declaration that the scheme was illegal and *ultra vires* the authority who were not entitled to use any part of the general rate fund for operating it. VAISEY, J., granted the declaration:—*Held*, the local authority were not entitled to use their discriminatory power as proprietors of the transport undertaking to confer out of the rates a special benefit on a particular class of inhabitants whom they thought deserving of such assistance. In the absence of clear statutory authority for such a proceeding (which a mere general power to charge differential fares was not), it was illegal on the ground that it would amount simply to the making of a gift or present in money's worth to a particular section of the local community at the expense of the general body of ratepayers. (Prescott *v.* Birmingham Corporation. C.A.) 48

MERCHANT SHIPPING

Compulsory pilotage; home trade ship; regular employment in home trade limits; voyage outside home trade limits; Merchant Shipping Act, 1894, s. 742; Pilotage Act, 1913, s. 11 (4).—A ship which was regularly engaged in trade within the home trade limits as prescribed by s. 742 of the Merchant Shipping Act, 1894, sailed from a port in the United Kingdom on a voyage to Oslo, which was outside the limits, but intended first to call at a port in Holland, which was within the limits. When she left the United Kingdom port she had no licensed pilot on board and did not display a pilot signal:—*Held*, that for that voyage she had ceased to be exempt from compulsory pilotage as a "home trade ship" and that her master was guilty of offences against the Pilotage Act, 1913. (Smith *v.* Veen. Q.B.D.) 424

NATIONAL ASSISTANCE

Illegitimate child; bastardy order; application by National Assistance

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Board; no payment for maintenance by putative father within 12 months of birth; National Assistance Act, 1948, s. 44 (2), (3).—The respondent, M, admitted paternity of twin children born to Mrs. F on September 30, 1947, but he had made no payment for their maintenance within the 12 months following their birth. In December, 1954, complaints were preferred by the National Assistance Board against the respondent, stating that assistance had been given under part II of the National Assistance Act, 1948, on October 18, 1954, and other days by reference to the requirements of the two children and applying under s. 44 (2) of the Act for summonses to be served on the respondent under s. 3 of the Bastardy Laws Amendment Act, 1872:—*Held*, that the right of the board under s. 44 (2) of the Act of 1948 was separate from the right conferred on the mother by s. 3 of the Act of 1872 and was not limited by the conditions imposed by the Act of 1872 with regard to proof of the payment of maintenance within 12 months of the birth of the child, but could be exercised by the board within three years of the time when the board had last given assistance. (National Assistance Board *v.* Mitchell. Q.B.D.) 572

NATIONAL HEALTH

Superannuation; determination of questions by Minister of Health; "mental health officer"; shoemaker employed in mental hospital; periodically in charge of working patients; finality of determination of status by Minister; National Health Service Act, 1946, s. 67 (1) (*i*); National Health Service (Superannuation) Regulations, 1950 (S.I. 1950 No. 497), reg. 60.—The plaintiff was employed by the management committee of a mental hospital, being in charge of a shoemaker's shop attached to the hospital. Patients worked in the shop under the control of a charge-hand as part of their treatment, and in the absence of the charge-hand the plaintiff was in sole charge of the patients. On December 31, 1952, the Minister of Health informed the plaintiff that, pursuant to his powers under the National Health Service (Superannuation) Regulations, 1950, reg. 60, he had determined that the plaintiff was not a mental health officer within the meaning of the regulations, and was not, therefore, entitled to certain rights relating to superannuation. The plaintiff having brought an action against the Ministry for a declaration that he was a mental health officer within the meaning of reg. 1 (3) of the regulations, the Ministry contended that the court had no jurisdiction in the matter:—*Held*, in seeking a declaration that he was a mental health officer within reg. 1 (3) of the regulations, the plaintiff was, in effect, asking the Court to determine a question which, under reg. 60, was to be heard and determined and had, in fact, been determined, by the Minister; under the regulations the Court had no jurisdiction to proceed as an appellate authority to review and overrule a determination of the Minister under reg. 60; and, therefore, the Court had no jurisdiction to entertain the action. Decision of CASSELS, J. (118 J.P. 400), affirmed. (Healey *v.* Ministry of Health. C.A.) 242

NEGLIGENCE

1. Child; licensee; injury by falling into trench on housing estate; liability of local authority; danger obvious, but child too young to appreciate it.—In October, 1951, the plaintiff, a boy aged five years, was walking across an open space with his sister, aged seven years, the open space being part of a housing estate which was being deve-

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loped by the defendant corporation. In the middle of the open space a long deep trench had been dug for the purpose of laying a sewer. The infant plaintiff fell into the trench and broke his leg. Children from neighbouring houses, in one of which the infant plaintiff lived, were in the habit of playing on the open space, but, although the defendant corporation knew of this, they took no steps to prevent them from doing so. There was no evidence to show that little children frequently went there unaccompanied:—*Held*, (i) children as a class were licensed to play on the open space; the trench was neither an allurement to a child nor a danger concealed from an adult or even from an older child, but a child of the infant plaintiff's age was not old enough to see the necessity of avoiding it or of taking special care; although a licensor who tacitly permitted the public to use his land without discriminating between its members must assume that the public might include little children, as a general rule he would have discharged his duty towards them if the dangers they might encounter were only those which were obvious to a guardian or of which he had given a warning comprehensible to a guardian; the responsibility for the safety of little children must rest primarily on the parents and a licensor was entitled to assume that reasonable parents would not permit their children to be sent into danger without protection; in the present case, the defendant corporation ought not to have anticipated that the open space was a place where little children would be sent out to play by themselves, and, therefore, although the infant plaintiff was on the defendant corporation's land as a licensee, they were not in breach of their duty towards him; (ii) alternatively, the licence to the infant plaintiff to be on the land was conditional on his being accompanied by an adult, and, as he was not so accompanied, he was, therefore, a trespasser, and the claim must fail on that ground. *Dicta* of LORD SHAW OF DUNFERMLINE in Glasgow Corpn. v. Taylor (1921) (86 J.P. 92), applied. (Phipps *v.* Rochester Corporation. Q.B.D.) 92

2. Public authority; limitation of action; action for negligence against specialist at hospital administered under the National Health Service; Limitation Act, 1939, s. 21 (1).—On January 11, 1950, the defendant, an orthopaedic surgeon, who carried on a consulting practice at Eastbourne, was appointed as a part-time general and orthopaedic surgeon by the South-East Metropolitan Regional Hospital Board. The duties of his appointment were stated in a letter containing the board's offer of the appointment as being "the provision of hospital, and specialist services under s. 3 of the National Health Service Act, 1946." On November 23, 1950, the defendant performed an operation on the plaintiff at a hospital which was administered by the board. On November 28, 1952, the plaintiff commenced an action against the defendant, alleging that he had been negligent in his performance of the operation. In his defence the defendant claimed that, in performing the operation, he was acting in execution of a public duty or authority, and that, therefore, the plaintiff's claim was barred by the Limitation Act, 1939, s. 21 (1). On trial of the issue raised by the defence as a preliminary point of law:—*Held*, in performing the operation the defendant was carrying out the duty imposed on the Minister of Health by the National Health Service Act, 1946, s. 3 (1), which was to provide treatment for the sick through the services of specialists, as well as to provide the specialists themselves, and the defendant was, therefore, acting as an agent of a public

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authority, and the plaintiff's claim was barred. Gold v. Essex County Council (1942) (106 J.P. 242) applied. (Razzel *v.* Snowball. C.A.) 23

POLICE

Loss by authority of officer's services; constable injured through negligence of third person and subsequently discharged; claim by Crown against third person to recover amount of salary and allowances and pension paid to constable.—A police constable, a member of the New South Wales police force, was injured while travelling on duty in a tramcar with which a motor vehicle, negligently driven by the fourth respondent as agent of the third respondent (the first and second respondents being the owners of the vehicle) collided. The constable was disabled by his injuries from carrying out his duties as a member of the police force, and, later, he was discharged. Before his discharge, although deprived of his services as a member of the police force, the Crown paid him the salary and allowances appropriate to his office, and after his discharge he was paid a pension in accordance with the provisions of the New South Wales Police Regulation (Superannuation) Acts, 1906-1944. But for his disablement, he would not have commenced to receive such pension for a long time. The Crown, in an action *per quod servitium amisit*, claimed to recover from the respondents the salary and allowances already paid, and to be reimbursed in respect of the pension already paid and which would thereafter be paid, to the constable:—*Held*, there was a fundamental difference between the domestic relationship of servant and master and that of the holder of a public office and the State which he was said to serve; the police constable fell within the latter category, since his authority was original, not delegated, and was exercised at his own discretion by virtue of his office; he was a ministerial officer exercising statutory rights independently of contract; the action *per quod servitium amisit*, being a survival from a time when service was a status, should not be extended to the loss by the Crown of the services of a constable or member of a police force, who was the holder of an office regarded as a public office; and accordingly, the action did not lie. (Attorney-General for New South Wales *v.* Perpetual Trustee Co. Privy Council) 312

PRIVATE STREET WORKS

1. Amendment of resolution; no request by local authority; amendment by court; lack of jurisdiction; Private Street Works Act, 1892, s. 8 (1). —Where no application for the amendment of the resolution, plans, sections, estimates, or provisional apportionments in relation to a scheme for private street works has been made either by any objector or by the local authority under s. 8 of the Private Street Works Act, 1892, neither justices, nor quarter sessions on appeal from an order of justices, have any power to amend the scheme of their own motion. (R. *v.* West Kent Quarter Sessions Appeal Committee. *Ex parte* Jarvis. Q.B.D.) 302

2. Apportionment of expenses; road crossing railway line by bridge; vacant land adjoining; memorial by London Transport Executive to Minister; powers of Minister; Public Health Act, 1875, s. 268.— A local authority, having carried out private street works under the Public Health Act, 1875, on a road which crossed by a bridge a railway line and adjoined vacant land belonging to the London

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Transport Executive, demanded from the Executive a proportion of the expenses incurred. The Executive, as persons aggrieved by the decision, addressed a memorial under s. 268 of the Act to the Minister of Housing and Local Government, who allowed the Executive's appeal and ordered that no amount should be payable by them. On motion for *certiorari* by the local authority to question the Minister's decision:—*Held*, that under s. 268 the Minister had the widest possible power to decide what was equitable, and, therefore, his decision was valid. R. *v.* Local Government Board (1882) (47 J.P. 228) applied. (R. *v.* Minister of Housing and Local Government. *Ex parte* Finchley Corporation. Q.B.D.) 76

3. New street; objection by frontager; contention that road repairable by inhabitants at large; onus of proof; Highway Act, 1835, s. 23.—On the hearing by justices of an objection by a frontager to an apportionment of expenses of private street works made on him by the local authority, the frontager contended that the road was a road repairable by the inhabitants at large and so excluded from the scope of the Private Street Works Act, 1892. The justices found in favour of the frontager's contention:—*Held*, there was evidence to support the finding of the justices, which, therefore, could not be disturbed. *Per curiam:* on the true construction of the Private Street Works Act, 1892, if a local authority desired, under s. 6 (1) of the Act, to charge a frontager with the cost of making up a street, the burden was on them to prove that the street was not a highway repairable by the inhabitants at large, but no question of that onus arose unless the evidence was so evenly balanced that the court could not come to a determinate conclusion on it. (Huyton-With-Roby U.D.C. *v.* Hunter. C.A.) 407

PUBLIC HEALTH

Passage giving access to dwelling-house; requirement to pave; path giving access to house through front garden; Public Health Act, 1936, s. 56 (1).—Respondents owned a dwelling-house, access to the front door of which from the street was obtained by means of a path running through the front garden to the front door. The path then ran round the side of the house to the back door. The path was made of asphalt, but was not so constructed as to allow of the satisfactory drainage of its surface or subsoil to a proper outfall. The local authority served a notice on the respondents under s. 56 (1) of the Public Health Act, 1936, requiring them to " flag, asphalt, or pave " the path:—*Held*, that the words " passage giving access to a house " in s. 56 (1) of the Act were aimed at a passage in the nature of a court or yard, and did not include a path across a front garden giving access from the gate of the garden to the door of the house, and that the notice was, accordingly, invalid. (Denton U.D.C. *v.* Bursted Properties, Ltd. Q.B.D.) 161

QUARTER SESSIONS

Appeal against conviction; prejudice; real likelihood; document containing previous convictions of appellant shown to court during hearing; proofs of witnesses for prosecution shown to court; *certiorari*; document which should be placed before court.—During the hearing at quarter sessions of an appeal against conviction, the clerk of the peace, for the purpose of conveying information to the recorder on a matter which had arisen during the hearing, handed to the

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recorder a copy of a document stating the antecedents of the appellant. Immediately below the passage to which the recorder's attention was directed there was set out a long list of previous convictions of the appellant:—*Held*, that, though *certiorari* would not issue in the case of every irregularity which occurred in proceedings in magistrates' courts or at quarter sessions, the Court would adopt a test analogous to that adopted in cases of alleged bias, and consider whether there had been a real likelihood of prejudice; in the present case the Court could not assume that the recorder had not become aware of the appellant's previous convictions before he gave his decision dismissing the appeal; and, therefore, *certiorari* must issue to quash the proceedings. R. v. Camborne Justices. Ex parte Pearce (1954) (118 J.P. 488) and R. v. Hertfordshire Justices (1911) (75 J.P. 91) applied. *Per curiam:* On an appeal against a summary conviction, nothing should be placed before quarter sessions which could not be placed before a jury. Care must be taken to see that a statement as to the antecedents of the appellant prepared by the police is not given to quarter sessions till their decision is announced. The only documents which should be placed before quarter sessions prior to their decision are the conviction, the notice of appeal, and copies of exhibits which are intended to be proved and to the admissibility of which no objection has been taken. (R. *v.* Recorder of Grimsby. *Ex parte* Fuller. Q.B.D.) 560

RATING AND VALUATION

1. Assessment; dock undertaking; offices; valuation as part of undertaking; Local Government Act, 1948, s. 85 (1).—Until the passing of the Local Government Act, 1948, certain offices were rated as railway hereditaments. By s. 85 (1) of that Act, the premises were exempted from the payment of rates. In January, 1952, the user of the premises changed from railway to dock purposes and they became liable to be restored to the valuation list:—*Held*, the premises had to be valued as part of the dock undertaking and not on the basis of their full commercial value, because the adoption of the "profits basis" for the undertaking as a whole negatived the extraction of individual hereditaments on a wholly different basis. (Clayton (Valuation Officer) *v.* British Transport Commission. C.A.) 395

2. De-rating; freight transport hereditament; dock undertaking; installations for unshipping and storing oil before distribution; Rating and Valuation (Apportionment) Act, 1928, s. 5 (1) (*c*), s. 6 (3) (*b*).—The appellant ratepayers were the occupiers of land along the bank of the river Humber which formed part of the port of Hull. They held the land under leases from the dock authority. The ratepayers were the sole selling agents in the United Kingdom of three oil producing companies, and they used the hereditament in their business of importing, distributing, and marketing oil. Incoming tankers unshipped their cargoes of oil at two jetties belonging to the dock authority by pumping the oil from the tankers through pipes running out along the jetties and leading to storage tanks on the hereditament. The tank capacity of the hereditament was over 200,000 tons, and it habitually contained stocks of oil sufficient to cover one month's deliveries in the event of receipts being suspended. From the stocks of oil in the tanks the ratepayers distributed supplies by land and water to their own internal depots and also to customers and consumers. Approximately one quarter of the oil from the

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incoming tankers was dutiable, and technically the whole hereditament, including the pipes and storage tanks, was a bonded warehouse. The ratepayers must have available on the hereditament a tankage capacity in excess of the day to day requirements of distribution. They contended that for rating purposes the hereditament should be treated as a freight transport hereditament under s. 5 (1) (*c*) of the Rating and Valuation (Apportionment) Act, 1928, and be partially exempted from rating:—*Held*, (i) to qualify as a freight transport hereditament the ratepayers must show that the hereditament satisfied all the following conditions, *viz.*: (*a*) that it was occupied and used wholly or partly for dock purposes; (*b*) that it was so occupied and used as part of a dock undertaking; and (*c*) that such dock undertaking was one whereof a substantial proportion of the volume of business was concerned with the shipping and unshipping of merchandise not belonging to or intended for the use of the undertakers; (ii) if it was shown that the whole of a hereditament was primarily used for warehousing within the meaning of s. 6 (3) (*b*) of the Act of 1928, it was disqualified from de-rating as a freight transport hereditament, notwithstanding that it, or part of it, was also used for purposes connected with unshipping; in the present case the pipes and pumps on the hereditament were not warehouses or used for such purposes primarily or at all; the tanks were necessary for the purpose of unshipping the oil, and there was no conclusive reason for regarding the unshipping use as secondary and the warehousing use as primary; (iii) but the hereditament was not used as part of a dock undertaking because the ratepayers used it solely for the purposes of their own individual business and not by way of performing the functions properly within the province of dock undertakers as such, and, further, the oil which was unshipped on the hereditament was used by the ratepayers for their own use; (iv) therefore, even if the two first conditions were fulfilled, the ratepayers failed to satisfy the third of the three conditions laid down by s. 5 (1) (*c*) of the Act of 1928, and the premises were not entitled to be de-rated. (Shell-Mex and B.P., Ltd. *v.* Clayton (Valuation Officer) and Holderness Rural District Council. C.A.) 545

3. De-rating; industrial hereditament; non-profit-making club; services rendered to club members and non-members; repair of units for own motor vehicles; maintenance of motor vehicles; Rating and Valuation (Apportionment) Act, 1928, s. 3 (1), (2).—A company provided for its members a social club and services and facilities in connection with motoring, such as road patrols, roadside telephone boxes, road signs. "Associate members", who were not members of the company, were only entitled to the services and facilities in connexion with motoring. The subscriptions of associated members were wholly used for those services and facilities which were paid out of a separate fund provided by those subscriptions and by a capitation fee in respect of the full members. It was the object of the company, not to make profits, but to provide the maximum services and facilities which the available money could provide. The company owned 754 vehicles, and it occupied a hereditament used to "service", re-condition, and repair their own vehicles and parts of such vehicles. Some motor cars were housed at the hereditament. The company also made badges for attaching to the motor vehicles of their members, and painted, sprayed and stencilled the blue and white road traffic signs:—*Held*, these activities were more akin to those of a club

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than trading activities in the ordinary sense, and, as the manual labour was not exercised on the hereditament, by way of trade within the meaning of s. 149 (1) of the Factory and Workshop Act, 1901, the hereditament was not an industrial hereditament within the meaning of s. 3 (1) of the Rating and Valuation (Apportionment) Act, 1928. (Automobile Proprietary, Ltd. *v.* Brown (Valuation Officer). C.A.) 328

4. De-rating; industrial hereditament; "retail shop"; "premises of similar character"; sawmill and timber yard; sales to contractors; Rating and Valuation (Apportionment) Act, 1928, s. 3 (1), proviso (*b*). —A company carried on the business of timber importers, merchants and saw millers. They used a hereditament to cut timber and process about 77 *per cent.* of it to meet the needs of the customers, the remainder being sold without processing. The customers of the company were, as to about 92 *per cent.*, builders, and, as to about eight *per cent.*, merchants or owners of factories. Occasionally the company sold small quantities of timber to members of the public and disposed of the sawdust to butchers. They neither sought nor welcomed small customers, and sales to them were negligible. Before incorporating the timber purchased from the company into a building, the customers had to work on the timber to cut and fit it for its place in the building. There was no window display or show of timber to attract customers:—*Held*, giving the words "retail shop" their significance as ordinary words, the premises were not of such a character as to make it possible to hold that the company were using the hereditament "for the purpose of a retail shop" within s. 3 (1), proviso (*b*), of the Rating and Valuation (Apportionment) Act, 1928, or that the hereditament was "premises of a similar character where retail trade or business is carried on" within s. 3 (4) of the Act, and, therefore, the hereditament was an industrial hereditament. (Dolton Bournes & Dolton, Ltd. *v.* Osmond (Valuation Officer). C.A.) 380

5. Exemption; fine arts society; promotion of folk dancing and songs; support in part by annual voluntary contributions; members entitled to privileges; Scientific Societies Act, 1843, s. 1.—The leading objects of a society were directed (among other things) to the preservation and making known and encouraging the practice in their traditional forms of folk dances, including country dances, such as "Sir Roger de Coverley" and "The Lancers," and of folk music, including singing games such as "Gathering nuts in May" and "Here we go round the mulberry bush", and to the promotion of the knowledge and practice of such folk dances and music by means of schools, classes, examinations, lectures, demonstrations and other like methods. Members of the society were entitled to certain privileges, such as free copies of the annual journal of the society and participation in functions organized by the society at favourable rates compared with the charges made to non-members. The society claimed exemption from rates under s. 1 of the Scientific Societies Act, 1843, as being a society instituted for purposes of science and the fine arts exclusively and supported in part by annual voluntary contributions:—*Held*, fine arts primarily comprised the plastic arts of design, painting, sculpture and architecture, but were not interpreted more widely, and music must be taken as being included in that class, but any further addition to the class would have to be activities showing true analogy

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to the primary instances; although ballet dancing might be included in the class of fine arts, folk dancing and singing games did not fall within that term; and, therefore, the society could not claim exemption under s. 1 of the Act of 1843. (O'Sullivan (Valuation Officer) *v.* English Folk Dance and Song Society. C.A.) 484

6. Exemption; scientific society; "purpose of science exclusively"; purposes stated in constitution; advancement of fuel technology; object also to further interests of members; Scientific Societies Act, 1843, s. 1.—The ratepayer, the Institute of Fuel, was incorporated by royal charter in 1946, the purposes of the institute being stated in its charter as follows: "(*a*) To promote, foster, and develop the general advancement of the various branches of fuel technology as an end in itself, and as a means of furthering the more scientific and economic utilization of fuel of all kinds for industrial, commercial, public, agricultural, domestic, transport and/or other purposes, and to promote, assist, finance, and support such industrial and scientific research, investigation, and experimental work in the economical treatment and application of fuel as the institute may consider likely to conduce to those ends and to the benefit of the community at large . . . (*d*) To uphold the status of members of the institute by holding or prescribing examinations for candidates for election and by requiring standards of knowledge and experience which can be approved . . . (*h*) To do all other things incidental or conducive to the attainment of the above objects or any of them." The institute claimed in the present proceedings to be entitled to exemption from rates as being a body "instituted for purposes of science . . . exclusively" within the meaning of s. 1 of the Scientific Societies Act, 1843. It was not disputed that fuel technology was an applied science, and, therefore, within the scope of the Act of 1843, but the valuation officer disputed that the institute was incorporated exclusively for the advancement or promotion of science:—*Held*, (i) the question whether a society was instituted for purposes of science exclusively within the meaning of s. 1 of the Act of 1843 must be determined by reference to the purposes of the society as defined by its constitution rather than the purposes it might actually pursue in practice; (ii) (JENKINS, L.J., dissenting) the furtherance of the interests of members of the institute, as professional men practising fuel technology, was an object or purpose of the institute distinct and collateral, even though relatively subsidiary, to the more important object or purpose specified in para. (*a*) of the charter, and, therefore, the institute failed to qualify for the exemption claimed; (iii) on the construction of the second part of the purposes of para. (*a*), *i.e.*, the persuasion of users of all kinds to put into practice the result of studies made by the institute and its members, SIR RAYMOND EVERSHED, M.R., expressed no opinion; but BIRKETT, L.J., held (JENKINS, L.J., dissenting) that it was a commercial or social purpose rather than a scientific purpose. (Institute of Fuel *v.* Morley (Valuation Officer) and Another. C.A.) 108

7. Local valuation court; appeals by valuation officer; intention of rating authority to appear to support appeal; withdrawal by valuation officer; refusal of court to hear rating authority; application by rating authority for *mandamus*; Local Government Act, 1948, s. 48 (4).—Refusal by Divisional Court to order *mandamus* at instance of rating authorities directing a local valuation court to hear appeals by valuation officer which had been withdrawn by him. (*Re* Applications by Brixham U.D.C. and Others. Q.B.D.) 19

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8. Rateable occupation; builders' huts; temporary erection and use on building.—The London County Council intended to build schools on certain sites and entered into contracts with builders. In pursuance of those contracts the council handed over the sites to the contractors who erected thereon huts for the purpose of carrying out the works. These structures rested on the ground simply by their own weight, and it was anticipated that they would remain on the sites for some 12 months, but, in fact, they remained there for 18 months and upwards. On the question whether those structures were rateable hereditaments:—*Held*, the huts were in rateable occupation and were rateable because (i) the four requisites approved by the Court of Appeal in John Laing & Son, Ltd. *v.* Kingswood Assessment Committee (1949) (113 J.P. 111) were present, and (ii) they were not chattels, because they were brought on the site in pieces and were erected on the site, and to remove them it would be necessary to dismantle them so that they would lose the essential character which they bore when erected on the site and return to their previous form of pieces of board or planks and corrugated iron. (London County Council *v.* Wilkins (Valuation Officer). C.A.) 351

RENT CONTROL

1. Rent tribunal; jurisdiction; application for extension of security of tenure; applications for two extensions granted; adjournment of application for further extension; refusal on ground notice to quit had expired; Landlord and Tenant (Rent Control) Act, 1949, s. 11 (2) (*a*), (*b*).—On July 23, 1952, the tenant of a furnished room referred her contract of tenancy to a rent tribunal under s. 2 (1) of the Furnished Houses (Rent Control) Act, 1946. On October 9, 1952, the tribunal reduced the rent. On August 21, 1953, the landlord served a notice to quit on the tenant, and on the same date the tenant applied to the tribunal for an extension of security of tenure under s. 11 (1) of the Landlord and Tenant (Rent Control) Act, 1949. On August 30, 1953, the tribunal ordered that the notice to quit should not take effect until November 30, 1953. On November 12, 1953, the tenant made a second application for extension of security of tenure, which the tribunal granted on December 10, 1953, ordering that the notice to quit should not take effect until March 10, 1954. On February 25, 1954, the tenant made a third application for extension of security of tenure. On March 10, 1954, the tribunal decided to adjourn this application as the landlord had commenced proceedings in the county court for recovery of possession. On October 11, 1954, the landlord's claim was dismissed by the county court on the ground that the notice to quit had not expired. The adjourned application came before the rent tribunal on October 25, 1954, but they then refused to hear it on the ground that they had no jurisdiction because the notice to quit had expired. On application by the tenant for *mandamus*:—*Held*, that the notice to quit had not become effective as the third application for extension of security of tenure had been made before the extension granted on the second application had expired; that the tenant would be entitled, if the tribunal thought proper, to a further period of three months on anything of the extended period which was still available to her when her application was adjourned; and that, accordingly, *mandamus* must issue for the tribunal to consider the tenant's application on that basis. (R. *v.* Paddington South Rent Tribunal. *Ex parte* Millard. Q.B.D.) ... 300

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2. Rent tribunal; jurisdiction; *certiorari*; claim by landlords for increased rent on account of increase in cost of services provided; order by tribunal for increase; services in respect of which increase awarded set out in detail in order; no service included which could not properly be regarded as such; Housing Repairs and Rents Act, 1954, s. 40 (2).—Landlords of flats applied to a rent tribunal for an increase in the rents of the flats on the ground that there had been a substantial rise in the cost of the services, partly contractual and partly non-contractual, which they rendered to the tenants. The tribunal ordered an increase in the rents, and in their order set out in detail the services in respect of which they made the increase, dividing them into two classes, contractual and non-contractual. There was nothing included in the order which was not in fact a service, though it was contended on behalf of the tenants that certain matters ought rather to be regarded as maintenance:—*Held*, that the tribunal had acted within the jurisdiction conferred on them by statute, and that the question whether they had acted rightly or wrongly within that jurisdiction could not be brought up on *certiorari*, and, therefore, *certiorari* would not lie. *Per* LORD GODDARD, C.J.: If, on the face of the order, it had clearly appeared that the tribunal had taken into consideration something which was not a service at all, *certiorari* might lie. (R. *v.* Paddington North and St. Marylebone Rent Tribunal. *Ex parte* Perry and Others. Q.B.D.) 565

ROAD TRAFFIC

1. Accident; duty to report; accident "owing to presence of motor vehicle on a road"; injury to passenger alighting from moving vehicle; Road Traffic Act, 1930, s. 22 (2).—By s. 22 of the Road Traffic Act, 1930: "If in any case, owing to the presence of a motor vehicle on a road, an accident occurs . . . ," the driver of the vehicle must in certain cases report the accident in the manner prescribed by the section. The respondent, an omnibus driver, slowed down when approaching a road junction because the traffic signals were at red, but he did not stop at the signals because they had changed to green before it was necessary for him to do so. While the omnibus was crossing the junction, a passenger, notwithstanding warnings by the conductor, stepped off the platform, fell forward on the road, and injured himself. When the omnibus stopped at an authorized stopping place beyond the road junction, the conductor informed the respondent what had happened. The respondent not having reported the accident in the manner prescribed by the section, justices dismissed an information preferred against him under s. 22 (2) on the ground that the accident was not one within the meaning of the section. On appeal by the prosecution to the Divisional Court:—*Held*, that the section applied where there was some direct connexion between the motor vehicle and the happening of the accident; that, on the facts of the present case there was such a connexion; and that the respondent was, therefore, guilty of the offence charged. (Quelch *v.* Phipps. Q.B.D.) 430

2. Careless driving; asleep while driving; Road Traffic Act, 1930, s. 12 (1).—Between 6.20 and 6.30 *p.m.* on a day in September, 1954, the respondent was driving along the public highway. The weather was clear, visibility was good, and the road, which was 20 *ft.* wide, was straight and in good condition. The respondent's car veered on to the wrong side of the road and collided with an approaching car

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which was on its correct side of the road. There was no other traffic on the road. At the time of the collision the respondent had fallen asleep. Being charged with driving without due care and attention, contrary to s. 12 of the Road Traffic Act, 1930, she contended that as she was asleep she was not in control of her actions and was not driving:—*Held*, the fact that the respondent was asleep was not a sufficient answer to the charge and the offence was proved. *Per curiam:* there is no conflict between Kay *v.* Butterworth (1945) (110 J.P. 75) and Edwards *v.* Clarke (1950) (unreported), but the latter case depended on its special facts. (Henderson *v.* Jones. Q.B.D.) ... 304

3. Dangerous driving; notice of intended prosecution; defendant unconscious and in hospital; notice sent by registered post to defendant's home address within statutory period; receipt by defendant's wife; validity of notice; Road Traffic Act, 1930, s. 21 (c). —By the Road Traffic Act, 1930, s. 21, a person shall not be convicted of, among other offences, dangerous driving unless, *inter alia*, " (c) within . . . 14 days [of the commission of the offence] a notice of the intended prosecution . . . was served on or sent by registered post to " the offender. The respondent had a motor accident about midnight on January 23, 1955. He was seriously injured and could not be warned at the time that the question of prosecuting him would be considered. He was removed to hospital and remained there for two months. A police officer visited the hospital on the day of the accident and again on February 2, but on neither occasion was he able to converse with the respondent, and he formed the view that he was likely to be detained at the hospital for a considerable time. He learnt that the respondent's wife was still living at the respondent's home address, and on February 2 a notice of intended prosecution which complied with the Act was sent by registered post addressed to the respondent at his home address. It was received there by the respondent's wife on February 3, but was not given by her to the respondent till after 14 days from the date of the alleged offence. An information was preferred at a magistrates' court charging the respondent with dangerous driving, but the justices dismissed the information on the ground that no valid notice of intended prosecution under s. 21 (c) of the Act had been served on the respondent. *Held* (BARRY, J., dissenting), that the sending, and not the receipt, of the notice being decisive, the duty laid on the prosecution under s. 21 (c) was performed if the notice was sent to the alleged offender wherever it was likely that it would come to his attention within the specified time; that in the present case the police, having made proper inquiries, were justified in addressing the notice to the respondent's home; and that, therefore, the notice was valid and the case must be remitted to the justices to continue the hearing. (Sandland *v.* Neale. Q.B.D.) 583

4. Disqualification for holding licence; power to limit; vehicle " of same class or description "; " 5 cwt." vehicle; no such class mentioned in Act; no definition of " description " in Act; duty of justices; Road Traffic Act, 1930, s. 2 (1), s. 6 (1) proviso.—The respondent was convicted before a court of summary jurisdiction of permitting a youth under 17 years of age to drive a motor vehicle, contrary to s. 9 (4) of the Road Traffic Act, 1930, and of permitting the use of the vehicle when uninsured, contrary to s. 35 (1) of the Act. The vehicle was described by the justices as " a delivery van of a size or capacity sometimes known as a 'five hundredweight.' " Purporting

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to act under s. 6 (1) of the Act and to limit disqualification to vehicles of the same class or description as the vehicle in relation to which the offences had been committed, the justices disqualified the respondent for holding a licence in respect of five hundredweight vehicles for 12 months. No such class of vehicles is to be found in the Act, and the Act contains no definition of "description." On appeal by the prosecution on the ground that the justices' order was invalid as there was no such class or description of vehicles as a five hundredweight vehicle:—*Held*, that, as the Act contained no definition of "description," the justices were in law entitled to define their own description in the way in which they had and to limit disqualification accordingly, and, therefore, the court could not interfere with their order. *Per* LORD GODDARD, C.J.: In future, when justices are limiting disqualification under the proviso to s. 6 (1), they should limit it to vehicles which are dealt with in a particular class under the Act or under a particular description in sch. 1 to the Act or in the regulations made under the Act. (Petherick *v.* Buckland. Q.B.D.) 82

5. Driving when disqualified; offender under 21; sentence; when imprisonment permissible; Road Traffic Act, 1930, s. 7 (4); Criminal Justice Act, 1948, s. 17 (2).—When an offender under 21 years of age is convicted of driving a motor vehicle when disqualified for holding a licence, contrary to s. 7 of the Road Traffic Act, 1930, which provides that, in the absence of special circumstances, imprisonment must be imposed, the court shall have regard to s. 17 (2) of the Criminal Justice Act, 1948, and impose imprisonment only if they are satisfied that no other method of dealing with the offender is appropriate. But where an offender aged 20 years was convicted of the aforementioned offence, and it was proved that he had previous convictions of using motor vehicles while uninsured and other driving offences and justices imposed a sentence of imprisonment, stating that they considered that no other method of dealing with the offender was appropriate having regard to his previous convictions and the serious nature of the offence charged:—*Held*, that in the circumstances the sentence of imprisonment was right. (Davidson-Houston *v.* Lanning. Q.B.D.) 428

6. Driving without licence; burden of proof; matter peculiarly within knowledge of defendant; Road Traffic Act, 1930, s. 4 (1).—By s. 4 (1) of the Road Traffic Act, 1930: "A person shall not drive a motor vehicle on a road unless he is the holder of a licence . . . " A driver of a motor vehicle, who was summoned for an offence against this subsection, did not appear at the hearing of the summons, but sent a letter to the justices stating that he was guilty. It was not proved that the letter was written by him, nor was there any evidence before the justices whether he did or did not hold a licence, and on this ground the justices dismissed the information:—*Held*, that the question whether he had a licence or not being a matter which lay peculiarly within the defendant's knowledge, the burden of proof that he had a licence lay on him, and, in the absence of such proof, the justices were bound to convict. (John *v.* Humphreys. Q.B.D.) ... 309

7. Offence; sentence; imprisonment and disqualification; period of disqualification to exceed substantially that of imprisonment; Road Traffic Act, 1930, s. 6.—Where an offender has been convicted of an offence under the Road Traffic Acts and the court imposes, in addition

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to a sentence of imprisonment, an order of disqualification for holding or obtaining a driving licence, the period of disqualification should be substantially longer than that of imprisonment, as, otherwise, since the disqualification must run from the date of conviction, it will, in effect, be operative only during the period of remission of sentence which the offender may be granted. (R. *v.* Phillips. C.C.A.) ... 499

8. "Road"; "road to which public has access"; Road Traffic Act, 1930, s. 121 (1).—The plaintiff was injured by a lorry in an accident on a road forming part of the premises of the Port of London Authority, the lorry driver not being insured under the Road Traffic Act, 1930, s. 35. In order to enter the dock area passes were needed, and unauthorized persons were refused admission. In an action against the lorry driver for damages for negligence, the plaintiff was awarded damages. Judgment being unsatisfied, he claimed to recover the damages from the defendants, who contended that the road concerned was not a "road" within the meaning of the Road Traffic Act, 1930, s. 121 (1):—*Held*, the road in question was not a "road" within the meaning of s. 121 (1) of the Act since it was not a road to which the general public had access either as a matter of legal right or by tolerance of the Port of London Authority; at the material time the lorry driver was not required to be insured under s. 35 of the Act; and the plaintiff's claim must fail. *Dicta* of LORD CLYDE in Harrison v. Hill (1932 S.C. (J.) 16) applied. (Buchanan *v.* Motor Insurers' Bureau. Q.B.D.) ... 227

THEATRES

Stage play; "allowance" by Lord Chamberlain; unlicensed addition to play; disobedience by actor to orders of licensee of theatre; liability of licensee; Theatres Act, 1843, s. 15.—The appellant, who was the licensee and manager of a theatre, presented at the theatre a play which had been licensed by the Lord Chamberlain in a script which included stage directions. Before the performance the appellant interviewed the principal actor, who also directed the play, and told him that there must be no departure from the script, and that warning was repeated later. In the final scene, however, contrary to the appellant's orders, the actor departed from the stage directions in the script and acted in an indecent manner. Justices convicted the appellant on an information charging him with causing part of a stage play to be presented before it had been allowed by the Lord Chamberlain, contrary to s. 15 of the Theatres Act, 1843:—*Held*, that, as the mandate of the appellant to the principal actor had been to present the play as authorized by the Lord Chamberlain and there had been no authority from the appellant to the actor to present the indecent incident, the appellant could not be held to have "caused" the presentation of the unauthorized part of the play, and the conviction must, therefore, be quashed. *Dictum* of LORD WRIGHT in Houston v. Buchanan ([1940] 2 All E.R. 187) applied. (Lovelace *v.* Director of Public Prosecutions. Q.B.D. 21

TORT

Hospital; injury to wife of patient; permission by hospital authority for wife to visit husband at any time; invitee or licensee; liability of hospital authority.—The plaintiff, whose husband was a patient under the National Health Service in a hospital managed and con-

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trolled by the defendants, was notified by them that he was on the danger list and was given permission to visit him at any time. As she was leaving the hospital after a visit to her husband, she slipped and fell on a part of the floor of the ward where polish had been recently spread, but had not been rubbed off. It was a rule of the hospital that warning should be given if polishing was in progress, but no warning was given to the plaintiff on the occasion in question, though she had been warned on previous occasions, nor did she know that there was polish on the floor:—*Held*, (i) since the plaintiff was visiting her husband who was a patient in the hospital with the permission of the defendants, she was there on a matter of material interest to herself and the defendants, and, therefore, she was an invitee, and, that part of the floor of the ward on which was the slippery polish, the defendants were liable for breach of their duty to her; (ii) even if she were a licensee and not an invitee, the defendants were in breach of their duty to her, since the part of the floor concerned was a concealed danger against which she was entitled to be protected and of which she was not warned; (iii) whether she was an invitee or a licensee, the defendants did not act with reasonable care, which required a warning to be given to her of the polish on the floor, and, therefore, they were liable for negligence. (Slade *v.* Battersea and Putney Group Hospital Management Committee. Q.B.D.) 212

TOWN AND COUNTRY PLANNING

1. Enforcement notice; development prior to July 1, 1948; Town and Country Planning Act, 1947, s. 23 (1), (4), s. 75 (1).—A local planning authority served on the respondents, the owners of land on which a holiday camp had been carried on since 1934, an enforcement notice under the Town and Country Planning Act, 1947. The notice stated that the development of the land appeared "to be in contravention of planning control," and it required the respondents to discontinue the use of the land as a holiday camp and every use of it other than that for the purposes of agricultural land. In notes on the back, it drew attention to s. 23 of the Act referring to development taking place after July 1, 1948, the date on which the Act came into operation, but it contained no reference to s. 75, dealing with development which had taken place before that date. On an appeal by the respondents against a refusal by the justices to quash the enforcement notice under s. 23 (4) of the Act:—*Held*, since, on its true construction, the enforcement notice alleged only contraventions of existing planning control (control effective since July 1, 1948), and since it failed, therefore, to specify clearly the contravention on which the local planning authority relied, which related to development before that date, it was invalid and should be quashed. Lincoln County Council (Parts of Lindsey) v. Henshall (1953) (117 J.P. 321) applied. (Park Estate (Bridlington), Ltd. *v.* East Riding County Council. C.A.) ... 392

2. Purchase notice; "owner" of land; person entitled to receive rackrent; grant by freeholders of long lease; confirmation of purchase notice; Town and Country Planning Act, 1947, s. 19 (1), s. 119 (1).—In 1873 freehold premises were leased for 80 years at a rent of £350 *per annum*. In 1922 a sub-lease of the premises was granted at £1,136 *per annum*. In 1925 the freeholders leased the premises to the sub-lessees for 75 years at a rent of £750 *per annum*, subject to, but with the benefit of, the lease of 1873. In 1940 the sub-lease of 1922 and the lease of 1925 were transferred to H. & Sons, Ltd. In 1942 H. & Sons, Ltd., acquired the residue of the lease of 1873. During the

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war of 1939-45, the premises were totally destroyed by enemy action. In 1950 H. & Sons, Ltd., applied to the corporation of London, as the planning authority, for permission to develop the site by re-building the premises, and, on permission being refused, they served a purchase notice on the corporation under the Town and Country Planning Act, 1947, s. 19 (1), requiring the corporation to purchase their leasehold interest in the site. The Minister confirmed this notice, and the leasehold interest of H. & Sons, Ltd. was assigned to the corporation. In 1952 the freeholders applied to the corporation for permission to develop the site, and, on permission being refused, they appealed to the Minister under s. 16 (1) of the Act. The Minister disallowed the appeal, and the freeholders then served a purchase notice on the corporation under s. 19 (1) of the Act, requiring the corporation to purchase the fee simple:—*Held*, (LORD OAKSEY and LORD PORTER dissenting), the freeholders were not entitled to serve a purchase notice as an owner of land under s. 19 (1) because they were not an "owner" within s. 119 (1) of that Act since, the land not having been let at a rackrent by the lease of June, 1925, the corporation of London as assignees of that lease were, and the freeholders were not, the persons who would be entitled to receive the rackrent if it were so let, and the definition of owner contained in s. 119 (1) was not excluded by the context of s. 19 (1). Decision of the COURT OF APPEAL, *sub nom.* R. v. Minister of Housing and Local Government, *ex parte* Corporation of London (1953) (118 J.P. 88) reversed. *Per curiam:* whether a rent at which land is leased is a rackrent is to be determined, for the purposes of the definition of "owner" in s. 119 (1) of the Act of 1947, according to the circumstances at the date of the lease. (Corporation of London *v.* Cusack-Smith and Others. House of Lords) 172

WATER

Supply; rates; water board's main in village street; houses connected to main by pipes; ancient right to water from standpipes free of charge; Water Act, 1945, sch. 3, s. 46 (1).—A water board is entitled to charge a water rate for water delivered to houses in pipes under s. 46 of sch. 3 to the Water Act, 1945, where they have "supplied" the water to the houses by delivering it through their pipes, tank and filter, notwithstanding that the inhabitants have had an immemorial right to use the water gratuitously if they choose to carry it away from the standpipes in the main to which the pipes delivering the water to the houses were connected. (South Devon Water Board *v.* Gibson. C.A.) 479

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